

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12610

1 comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section,
2 "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

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

5 **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and
6 Economic Development may proceed to adopt regulations necessary to implement the
7 changes made by this Act. The regulations take effect under AS 44.62 (Administrative
8 Procedure Act), but not before July 1, 2008.

9 * **Sec. 11.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect July 1, 2008.

PRIMERICA

A Citi Company

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May 5, 2007

The Honorable Johnny Ellis
State Senator District L
State Capitol Room 9
Juneau, AK 99801-1182
Fax: (907) 465-2529
Email: senator_johnny_ellis@legis.state.ak.us

Re: **House Bill 162 – Individual Loan Originator Licensing**

Dear Senator Ellis:

I am a concerned small businessperson and voter in Alaska and I oppose House Bill 162 as currently written because of its unintended negative consequences on my business.


As currently written, this bill proposes licensure and regulation of mortgage lenders and companies, which I support. However, the bill also requires individual licensure of exclusive agents working for these institutions. This type of duplicative licensure does not make sense for me and my Primerica business it will be a huge financial burden on my small business, limit competition and lead to increased costs of mortgage loans in Alaska.

Through my exclusive contract with Primerica, an affiliate of Citigroup, I offer basic mortgage loans by meeting face-to-face with members of my Alaska community. I cannot work for another mortgage company or shop loans to other lenders. This bill jeopardizes my Primerica business, which currently increases my earnings-potential and increases options for Alaska borrowers.

Primerica trains, monitors and supervises me in order to ensure compliance with applicable laws. As a testament to this high level of compliance oversight, Primerica is willing to accept both financial and regulatory responsibility for my origination activities and permit me to conduct my mortgage business under the authority of its mortgage license. This approach to mortgage licensing has been supported in a majority of states and does not diminish the important principles of consumer protection and regulatory oversight currently proposed by House Bill 162.

I strongly urge you to oppose House Bill 162 as written. Please speak with your fellow senators on the Senate Finance Committee and urge them not to move House Bill 162 out of committee as written it will force my small business out of the mortgage industry in Alaska.

Sincerely,



John Peck

**Chapter 60. Mortgage Lending Regulation Act.
Article 1. Licensing.**

Sec. 06.60.010. License required. (a) Except as provided under AS 06.60.015, a person, including a person doing business from outside this state, may not operate as a mortgage lender or mortgage broker in this state unless the person is licensed under this chapter.

(b) A person may not operate as an originator in this state unless the person is a natural person who is

(1) licensed as an originator under this chapter; and

(2) works under exclusive contract for, or as an employee of, a mortgage licensee.

(c) A mortgage license may cover more than one location of a mortgage licensee.

(d) A person who operates as both a mortgage lender and a mortgage broker is only required to obtain one mortgage license.

ANALYSIS: This defines the persons that require licensing by the department. It also delineates that an originator must be licensed, and work for a licensed mortgage broker or mortgage lender. This is to ensure that all originators work for a licensed business, or are exempt from licensing under AS 06.60.015.

Sec. 06.60.015. Exemptions; requirements of registration. (a) Except as provided by AS 06.60.370(c) and by (b) and (c) of this section, this chapter does not apply to a person who operates as a mortgage lender or mortgage broker if the person is

(1) a person who is authorized to engage in business as a bank, bank holding company, savings institution, savings and loan association, trust company with banking powers, or credit union under the laws of this state, another state, the United States, a territory of the United States, or the District of Columbia, and whose mortgage loan activity is subject to the general supervision, regulation, and examination of a regulatory body of this state, another state, the United States, a territory of the United States, or the District of Columbia;

(2) a subsidiary or an operating subsidiary of a person who is identified by (1) of this subsection, or of a bank holding company or savings and loan holding company, if the subsidiary or operating subsidiary certifies to the department on a form provided by the department that the subsidiary or operating subsidiary is exempt from this chapter because of applicable federal statute or regulation;

(3) an employee of a person identified in (1) or (2) of this subsection;

(4) a nonprofit corporation that makes mortgage loans to promote home ownership or home improvements; in this paragraph, "nonprofit corporation" means a corporation that qualifies under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code) for an exemption from federal income taxation;

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

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

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

(8) a person who is licensed by the United States Small Business Administration as a small business investment company under 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958).

(b) A person who is listed in (a)(1) - (8) of this section shall file a registration form to obtain an exemption under (a) of this section. The department shall determine the form and content of the registration form.

(c) A person who is licensed under AS 06.20 is exempt from the requirements of this chapter, except that the person is subject to AS 06.60.320 - 06.60.380.

(d) In this section, "bank holding company" has the meaning given in 12 U.S.C. 1841 (Bank Holding Company Act).

ANALYSIS: The listed exemptions are allowed because the professions or industry that is already licensed and regulated by various state and federal agencies. Under federal preemption, federally regulated financial institutions and their supervised subsidiaries are exempt from state regulation. A number of legal cases have defined the ability of states to have lawful oversight of federal institutions. Under (b), in order for the department to tract the number of exempted entities; the department will require notice from those entities. Under (c), the department already licenses small loan companies and conducts examination and overall supervision of these entities. The notice of exemption will require minimal recordkeeping on the part of the entity.

Sec. 06.60.020. Application for mortgage license. An application for a mortgage license must

(1) be in writing;

(2) be signed by the applicant and notarized;

(3) be on the form prescribed by the department;

(4) contain the name of the applicant, including the name of the business, and of the natural person who is designated to obtain the originator license under AS 06.60.025;

(5) if the applicant is a partnership or an association not covered by (6) or (7) of this section, contain the name and both the residence and business addresses of each partner of the partnership or member of the association;

(6) if the applicant is a corporation, contain the name and both the residence and business addresses of each officer and director of the corporation, and a shareholder holding

(A) 10 percent or more of the total outstanding voting shares, if the corporation has fewer than 75 shareholders; or

(B) more than 51 percent of the outstanding voting shares in the corporation, if the corporation has 75 or more shareholders;

(7) if the applicant is a limited liability company, contain the name and both the residence and business addresses of each member of the company, and any manager of the company who individually owns more than 51 percent of the limited liability company;

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- (8) contain the mailing address of the applicant, the street address and city, if any, for each business location that will be covered by the license, and an identification of the applicant's principal office;
- (9) provide the applicant's written consent to an investigation of the applicant under AS 06.60.030;
- (10) contain other information that the department may require concerning the organization and operations of the applicant and the financial responsibility, background, experience, and activities of the applicant and its directors, officers, members, owners, and other principals.

ANALYSIS: This is the list of items the department will require in order to have sufficient information to make a determination on the suitability of the applicant to become a licensee. Additional information that might be requested by the department may include, previous work history, educational training, levels of experience, and references. These additional items would be listed in regulations to provide applicants with pre-notice of what might be required in their application.

Sec. 06.60.025. Application for originator license. An application for an originator license must

- (1) be in writing;
- (2) be signed by the applicant and notarized;
- (3) be on a form prescribed by the department;
- (4) contain the name and residence address of the applicant;
- (5) include a complete set of fingerprints of the applicant; and
- (6) contain other information or supporting material that the department may require concerning the applicant, including other forms of identification of the applicant.

ANALYSIS: This is the list of items the department will require in order to have sufficient information to make a determination on the suitability of the applicant to become a licensee. Additional information that might be requested by the department may include previous work history, educational training, levels of experience, and references. These additional items would be listed in regulations to provide applicants with pre-notice of what might be required in their application.

Sec. 06.60.030. Investigation. The department shall investigate an applicant for a license to determine if the applicant satisfies the requirements of this chapter for the license.

ANALYSIS: This section provides notice to the applicant that the department is going to verify the information provided by the applicant and determine its accuracy, or if any omission has been made. In addition, as part of the review, the department will verify if the applicant has a criminal record.

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Sec. 06.60.035. Fees and expenses. (a) Except as provided by (c) of this section, when an applicant submits an application for a license under this chapter to the department, the applicant shall pay to the department

(1) a nonrefundable application fee of \$250 in partial payment of those investigation expenses incurred by the department; and

(2) a biennial license fee of \$500 for the period that terminates two years after the date the license is issued; after this payment, the biennial license fee is due every two years on the anniversary date of the original issuance of the license.

(b) An applicant shall pay all investigative fees incurred by the department before the department issues a license.

(c) An applicant is not required to pay the application fee or the biennial license fee under (a) of this section if the applicant is applying for a mortgage license and an originator license, is the principal owner or legally authorized manager of the mortgage license applicant, and is designated in the application under AS 06.60.020(4) as the individual to receive an originator license for the mortgage licensee.

ANALYSIS: These are the fees the licensee will pay to the department in order to fund the department's operation in administering this chapter. The fees paid by the licensee are separate to the examination fees, and the program administration fee that will also be used to support the department's budget.

Sec. 06.60.040. Competency testing. (a) A person who applies for an originator license shall pass a competency test conducted and graded by the department. The department shall establish the scope, content, and minimum passing score of the test by regulation.

(b) If an individual fails the competency test, the individual may take the competency test again. The department may charge an additional \$150 fee for each additional competency test that the department provides to the person.

ANALYSIS: This section provides for testing the applicants to validate their knowledge of the mortgage loan industry duties, regulations, laws, and general knowledge of the loan process. This will allow the department to verify that the pool of people in the industry is qualified. If an originator leaves the employment of an exempted entity, the originator will have to complete all the application process and competency testing in order to work a mortgage licensee. Under regulation, the department will determine the scope of the test and the required proficiency.

Sec. 06.60.045. Bonding. (a) An applicant for a mortgage license shall file with the application submitted to the department under AS 06.60.020 a bond with one or more sureties in the amount of \$25,000 under which the applicant is the obligor. The bond must be satisfactory to the department.

(b) The bond required by (a) of this section shall be for the use of the department, the Department of Law, or another person to recover for a claim for relief against the obligor under this chapter. The bond must state that the obligor will faithfully conform to and abide by the provisions of this chapter and all regulations adopted under this chapter and will pay the

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department, the Department of Law, or another person all money that may become due or owing to the department, the Department of Law, or the other person from the obligor under this chapter.

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

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

(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 the mortgage licensee to file with the department, within 10 days after the receipt of a written demand from the department, an additional bond that complies with the provisions of this section.

ANALYSIS: The bond provides the department with a method of recourse to protect consumers in the event of a claim for loss due to illegal or unethical practices by the licensee. This allows the department to provide an immediate source of recovery to a consumer while it processes the legal claim for recovery and restitution.

Sec. 06.60.050. Decision on application. (a) Within 30 days after the date the department has determined that it has received a complete application, the required bond if the application is for a mortgage license, and any required fees and investigative costs are received by the department, the department shall either grant or deny the license.

(b) If the department denies the license, the department shall promptly notify the applicant. The notification must indicate the reason for the denial and that the applicant is entitled to a hearing on the denial.

ANALYSIS: Provide the basis that the department is to arrive at a decision on whether or not to issue a license. If the applicant has meet these requirements, there should be no other barriers to their entry into becoming a mortgage licensee, or originator licensee. This coincides with review of sections 060 and 065 of this chapter.

Sec. 06.60.060. Determinations for mortgage licensing. Before granting a mortgage license, the department shall determine that

(1) the applicant has complied with the requirements of this chapter for obtaining the license;

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

(3) the department has not found grounds for denial of a license under AS 06.60.065.

ANALYSIS: Factors the department will consider when determining suitability for licensing of a mortgage broker or mortgage lender, in addition, items in 065 are reviewed as well.

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Sec. 06.60.065. Determinations for originator licensing. Before granting an originator license to a person, the department shall determine that the applicant has

(1) complied with the requirements of this chapter and paid all fees for obtaining the originator license;

(2) not been enjoined by a court of competent jurisdiction from engaging in an aspect of the business of providing financial services to the public; and

(3) not, within the previous seven years,

(A) been prohibited by a federal or state regulatory agency from engaging in, participating in, or controlling a finance-related activity that involves providing financial services to the public;

(B) been convicted, including a conviction based on a guilty plea or a plea of nolo contendere, of a felony or a misdemeanor involving fraud, misrepresentation, or dishonesty;

(C) committed an act, made an omission, or engaged in a practice that constitutes a breach of a fiduciary duty;

(D) made a false material statement of an application submitted under this chapter; or

(E) violated a provision of this chapter, a regulation adopted under this chapter, or an order of the department under this chapter.

ANALYSIS: Factors the department will consider when make a determination to grant a mortgage or originator license.

Sec. 06.60.070. Form and contents of license. A license must be in a form established by the department and must state the full name of the licensee. A mortgage license must state the address for each office of the business where the business of the licensee is to be conducted. If a mortgage licensee conducts business on the Internet, the mortgage license must also state the registered domain address through which the mortgage licensee conducts the mortgage licensee's business and the physical location of the mortgage licensee's main business office.

ANALYSIS: This section provides the requirement of posting the license at each office location of the mortgage licensee. In addition, it provides requirements for internet based licensees to post a notice on their website.

Sec. 06.60.075. License availability. A licensee shall provide a copy of the license to a person who requests a copy.

ANALYSIS: This section provides for full disclosure to the consumer or other interested parties. If a consumer has a problem with a licensee, they can have direct information about the license by obtaining a copy of their license.

Article 2. License Duration, Renewal, Inactivity, and Surrender.

Sec. 06.60.080. Duration and renewal of license. A license issued under this chapter remains in effect for two years after the license is issued unless revoked, suspended, surrendered, or made inactive under this chapter.

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ANALYSIS: The two-year term will allow the department to operate with a lower level of staffing. The two-year cycle begins on the date the license is issued, rather than on a set biennial basis. This will allow for the renewals to be randomly spaced out instead of being concentrated on an arbitrary date; this will allow for less staffing since the workload will be randomly spaced out during the calendar year.

Sec. 06.60.085. Renewal of license. (a) If a licensee intends to renew a license, the licensee shall submit to the department 30 days before the expiration of the licensee's license

- (1) a renewal application in the form and manner established by the department;
- (2) the biennial license fee required by AS 06.60.105;
- (3) if the renewal is for a mortgage license, a report identifying any changes in the information provided under AS 06.60.020(4) - (8);
- (4) if the renewal is for an originator license, certificates or other documents that show that the continuing education requirements of AS 06.60.160 have been satisfied; and
- (5) if the renewal is for an originator license, the fund fee required by AS 06.60.550.

(b) A renewal under (a) of this section is considered granted unless, within 30 days after the department determines it has received a completed renewal application containing the items in (a) of this section, the department notifies the licensee that the department has denied the renewal application because of the licensee's noncompliance with this chapter or another provision of AS 06.

ANALYSIS: This section provides the requirements for the department to issue renewal of licenses.

Sec. 06.60.090. Inactive license. (a) A license may be made inactive under this section.

(b) To be eligible to have a mortgage license be made inactive, all mortgage loans of a licensee must have been paid in full or sold.

(c) To make a license inactive, a licensee shall provide the department with a written request that the license be made inactive and return the license certificate to the department. The request must include the licensee's name, address, and other information that the department requires that is necessary for the department to process the request and a statement by the licensee that all mortgage loans of the licensee have been paid in full or sold.

(d) The department shall issue an inactive license certificate to a person whose license becomes inactive under this section.

(e) If a person holds a license that becomes inactive under this section, the person may not operate as a mortgage lender, mortgage broker, or originator under the license in this state until the license is reactivated.

(f) If a license is made inactive under this section, the license remains inactive until the person who holds the inactive license provides the department with a written request that the license be reactivated. The request must include the information that the department requires is necessary to process the request.

(g) While a license is inactive, the person holding the inactive license shall pay the biennial license fee as required by AS 06.60.105 and inform the department of any change that occurs in

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the name and address of the person, the location of the person's business, or in the business operations or control of the person, but the person is not required to maintain the bond required by AS 06.60.045 or to file the annual report required by AS 06.60.100.

(h) Notwithstanding AS 06.60.120, while a license is inactive under this section, the person who holds the license may not transfer the license to another person.

(i) While a license is inactive under this section, the person is not required to surrender the license under AS 06.60.097(b) for not having engaged in mortgage loan activity for 12 months.

(j) While a license is inactive under this section, the person holding the inactive license shall continue to maintain records as required by AS 06.60.135 for the business transactions of the person that occurred before the license became inactive.

(k) While a license is inactive under this section, the department may take action against the license, the person holding the inactive license, or both for noncompliance with this chapter before the license became inactive or for noncompliance with this section while the license is inactive.

(l) A licensee whose license lapses under this chapter is not eligible for an inactive license under this section unless the license is reactivated under AS 06.60.095.

(m) A person holding a license that is inactive under this section may not engage in activities for which the license is required, but may receive commissions or other payments from a person who contracted with or employed the licensee for services, if the services were performed while the licensee was actively licensed.

(n) Except as otherwise provided in this section and by regulations adopted by the department, the provisions of this chapter do not apply to a person holding an inactive license under this section.

ANALYSIS: This section provides for a licensee to suspend their license for a short period of time. This is intended to cover military service, appointment to governmental boards, commissions, or similar functions.

Sec. 06.60.095. Reactivation of inactive license. (a) Except as provided in (b) and (c) of this section, a person who has an inactive license certificate under AS 06.60.090 may apply to the department for an active license and pay the required fees.

(b) A person is eligible for reactivation of an inactive license if the person has been in an inactive status for less than 24 months from the anniversary date of the issuance of the initial inactive license. If the person has been in an inactive status for 24 months or longer, the person may obtain a license only by satisfying the qualifications applicable to initial licensure.

(c) The department may issue an active license that has been converted from inactive status under this section for the term remaining on the license before it was made inactive.

ANALYSIS: This section provides the steps a licensee must take to reactivate their license. This is to ensure that the inactive licensee completes all the necessary information for the department.

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Sec. 06.60.097. 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 mortgage licensee may not surrender a license until all loans of that mortgage 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 mortgage 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.

ANALYSIS: This section allows for a licensee to wind-up their business activities. However, it does not provide the licensee with a way to avoid any liabilities.

Article 3. Licensee Obligations.

Sec. 06.60.100. Annual report. (a) On or before March 15, or on another date established by the department by regulation, of each year a mortgage licensee shall file a report with the department giving relevant information that the department requires concerning the business and operations of each location in this state where business was conducted by the mortgage licensee in this state during the preceding calendar year. The mortgage licensee shall make the report under oath or on affirmation. The content and form of the report shall be established by the department by regulation.

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

ANALYSIS: This section provides the department with statistical information to be able to determine the activity of the mortgage loan market. In addition, the department can utilize the information as a test to determine if there are any unlicensed businesses conducting activity of a mortgage lender or mortgage broker.

Sec. 06.60.105. Biennial license fee. (a) Except as provided by (d) of this section, a licensee shall pay the department a biennial license fee of \$500.

(b) After the payment of the initial biennial license fee under AS 06.60.035, a licensee shall pay the biennial license fee every two years on or before the anniversary date of the original issuance of the license, subject to renewal by the department.

(c) A mortgage licensee who is licensed to act as both a mortgage broker and a mortgage lender is not required to pay more than one biennial license fee.

(d) An originator licensee is not required to pay a biennial license fee if the licensee holds a mortgage license and an originator license, is the principal owner or legally authorized manager of the mortgage licensee, and was designated in the application under AS 06.60.020(4) as the individual to receive an originator license for the mortgage licensee.

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

ANALYSIS: This section provides the bi-annual fee structure to provide funding for the department's budget. The intent is to have a zero cost allocation on the general fund.

Sec. 06.60.110. Location of business. A mortgage licensee may not maintain the mortgage licensee's principal place of business or a branch office within an office, suite, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with another business, unless the name, ownership, and business purpose of the other business is disclosed in the mortgage licensee's application for a mortgage license.

ANALYSIS: Each licensee will have each of their offices listed on their license. This allows the department to track the number of offices and locations that provide service to consumers.

Sec. 06.60.115. Change of place of business. If a mortgage licensee wishes to change the mortgage licensee's place of business to another location, the mortgage licensee shall submit a written notice to the department at least 10 days before relocating the business. If the mortgage licensee is otherwise in compliance with this chapter, the department shall issue a new mortgage license to the mortgage licensee to reflect the new location.

ANALYSIS: This section allows the department to track changes in business locations, and also make sure they are in compliance with the chapter at the time they are relocating.

Sec. 06.60.120. Transfer of business. (a) Except as provided by (b) of this section, a mortgage licensee may only transfer or assign the licensee's business if

(1) an application is made to the department to transfer or assign the business to another mortgage licensee with the same type of mortgage license as the transferring or assigning mortgage licensee;

(2) at least 30 days before the effective date of the proposed transfer or assignment, the department determines it has received a complete application; and

(3) the department determines that the proposed transfer or assignment complies with AS 06.60.060.

(b) A person who holds an originator license may not transfer or assign the originator license.

ANALYSIS: This section provides the department with the conditions that must be satisfied when a licensee sells their business.

Sec. 06.60.130. Change in business control or business operations. (a) The prior written approval of the department is required for the continued operation of a mortgage licensee's business when a change in control of the mortgage licensee is proposed. The department may require the information it considers necessary to determine whether a new application is required. The mortgage licensee requesting approval of the change in control shall pay all

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reasonable expenses incurred by the department to investigate and approve or deny the change in control.

(b) If there is a significant change in the business operations of a mortgage licensee not covered by AS 06.60.120, the mortgage licensee shall provide written notice to the department at least 30 days before the effective date of the change in business operations.

ANALYSIS: This section provides the department a method to follow up on a licensee when a mortgage licensee sells a portion of the business, it allows to department to apply the same standards as a new application received by the department.

Sec. 06.60.135. Records of mortgage licensee. (a) The requirements of this section apply to the business transactions of a mortgage licensee that occur entirely or partially in this state.

(b) A mortgage licensee shall keep and use in the mortgage licensee's business the accounting records that are in accord with generally accepted accounting principles.

(c) A mortgage licensee shall maintain a record, by electronic record or photocopying, for the account of each borrower and for each mortgage loan or mortgage loan application that is related to the purchase or refinancing of an existing mortgage loan. This record must contain all documents, notes, electronic correspondence, and forms that are produced or prepared for the mortgage loan by the mortgage licensee, and the mortgage licensee shall retain each document, note, electronic correspondence, and form for 36 months from the date they were created.

(d) A mortgage licensee shall retain for at least three years after final payment is made on a mortgage loan, or three years after a mortgage loan is sold, whichever occurs first, the original contract for the mortgage licensee's compensation, copies of the note, settlement statement, and truth-in-lending disclosure, an account of fees received in connection with the loan, and other papers or records relating to the loan that may be required by department order or regulation.

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

(f) In this section, "mortgage loan servicing agent" means a person who acts on behalf of the owner of a mortgage loan to collect payments on the mortgage loan and enforce the terms of the mortgage loan.

ANALYSIS: This section requires the retention of records by a mortgage license in order for the department to conduct regular examination as well as investigations of complaints.

Sec. 06.60.140. Availability of out-of-state records. A mortgage licensee who operates an office or other place of business outside this state that is licensed under this chapter shall, at the request of the department,

- (1) make the records of the office or place of business available to the department at a location within this state; or
- (2) reimburse the department its reasonable costs, as provided in AS 06.60.250(f), that are incurred by the department during an investigation or examination conducted at the office or place of business.

ANALYSIS: This section requires the licensees that operate from outside the state to maintain and provide records to the department when an examination or investigation is being conducted.

Sec. 06.60.145. Disqualified persons. (a) A disqualified person may not be an officer, a director, a partner, a member, a sole proprietor, a trustee, an employee of a mortgage licensee, or in another position with similar responsibilities. In this subsection, "employee" means an individual who negotiates an agreement with a member of the public for the mortgage licensee or who has access to, or responsibility for, escrow accounts or escrow money held by the mortgage licensee.

(b) A mortgage licensee may not permit a disqualified person to obtain an ownership interest in a mortgage licensee's business without the prior written approval of the department.

(c) Before a person may obtain an ownership interest in a mortgage licensee's business, the person shall authorize the department to access the person's criminal history information in any state or federal court to determine whether the person is a disqualified person.

(d) In this section,

- (1) "disqualified person" means a person who is not a licensee;
- (2) "ownership interest" means an ownership interest of
 - (A) 10 percent or more, if the mortgage licensee is a corporation with fewer than 75 shareholders;
 - (B) 51 percent or more, if the mortgage licensee is a corporation with 75 or more shareholders or a limited liability company.

ANALYSIS: This section sets forth who can be denied being added to the licensee, or take over as a licensee.

Sec. 06.60.150. Posting of license. A mortgage licensee shall conspicuously post the mortgage license in each place of business of the mortgage licensee.

ANALYSIS: This section requires that a license be posted in a space that is clearly visible to the public.

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Sec. 06.60.155. Restriction on originator licensee work. An originator licensee may only work as an originator licensee under contract for, or as an employee of, one mortgage licensee.

ANALYSIS: This section is intended to limit the ability of an originator to work for multiple mortgage licensees. The purpose of this section is to limit the possibility of an originator from juggling applicants when they cannot obtain financing from one of the originators employers; or flip the applicant to another employer of the originator in order to obtain higher fees or cash bonuses.

Sec. 06.60.157. Mortgage licensee restrictions on performance of originator activities. A mortgage licensee may not perform originator activities except through a licensed originator who is an employee of or under exclusive contract with a mortgage licensee.

ANALYSIS: This section is to restrict a mortgage licensee from conducting business of making loans without the use of a licensed originator.

Sec. 06.60.159. Mortgage licensee employment of, contract with, and liability for originator.

(a) A mortgage licensee may not employ, or enter into a contract with a person who acts as an originator for the mortgage licensee unless the person has an originator license.

(b) A mortgage licensee is liable for the conduct of a person acting as an originator if the mortgage licensee knows, or should have known, that the person's conduct violates this chapter and the person is employed by or is under contract with the mortgage licensee to act as an originator.

ANALYSIS: This places responsibility for supervision of originators on a mortgage licensee. It also restricts a mortgage licensee to only hiring or contracting with licensed originators.

Sec. 06.60.160. Continuing education requirements. (a) An originator licensee shall complete and submit to the department evidence of at least 24 hours of continuing education for each biennial license period. The originator licensee or mortgage licensee shall submit the evidence when the originator licensee or mortgage licensee submits a license renewal application. The 24 hours of continuing education must be in a training program approved by the department.

(b) The department shall establish an education committee consisting of seven members. The commissioner of commerce, community, and economic development shall appoint two persons employed by the department and five licensees to serve on the committee. A licensee may apply to the department to serve on the education committee established under this subsection by submitting an application in the form and with the content established by the department.

(c) The department may consider the recommendations of the education committee when determining which training program to approve for the continuing education requirements.

(d) The department shall publish on a regular basis a listing of classes, seminars, or other training programs that may be used to satisfy the continuing education requirements of this section.

ANALYSIS: This section requires originator licensees to stay informed about new changes in the laws and regulations. The purpose is to maintain a knowledgeable workforce by continuing to develop their skills. This is a similar requirement placed on Certified Public Accountants or Professional Engineers.

Article 4. Discipline and Investigation.

Sec. 06.60.200. Disciplinary action. (a) In addition to any other disciplinary action allowed under this chapter, the department may suspend or revoke a license or take other disciplinary action against a licensee, including action that is or may be authorized under AS 06.01 or under a regulation adopted under this chapter or AS 06.01, if the department finds that

(1) the licensee has failed to

- (A) make a payment required by this chapter;**
- (B) maintain a bond required under AS 06.60.045, if the licensee is a mortgage licensee;**
- (C) satisfy the continuing education requirements, if the licensee is an originator licensee;**
- (D) comply with an applicable provision of this title, with an applicable regulation adopted under this title, with a lawful demand, ruling, order, or requirement of the department, or with another statute or regulation applicable to the conduct of the licensee's business;**

(2) the licensee has, with respect to a mortgage loan transaction,

- (A) made a material misrepresentation;**
- (B) made a false promise likely to influence, persuade, or induce another person to take action;**
- (C) engaged in a serious course of misrepresentation or made a false promise through another licensee;**
- (D) engaged in conduct that is fraudulent or dishonest;**
- (E) procured, or helped another person to procure, a license by deceiving the department;**
- (F) engaged in conduct of which the department did not have knowledge when the department issued the license, if the conduct demonstrates that the licensee is not fit to engage in the activities for which the licensee was licensed;**
- (G) authorized, directed, planned, or aided in the publishing, distribution, or circulation of a materially false statement or a material misrepresentation concerning the licensee's business or concerning mortgage loans originated in the course of the licensee's business in this or another state; or**

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

(b) In addition to the bases for disciplinary action under (a) of this section, the department may revoke the license of a licensee who is convicted, including conviction by a plea of not guilty or a plea of nolo contendere, of a felony or misdemeanor involving fraud, misrepresentation, or dishonesty committed while licensed under this chapter. A person whose license is revoked under this subsection is not qualified to be issued another license until the person provides proof acceptable to the department that the person has been unconditionally discharged from the conviction. In this subsection, "unconditional discharge" has the meaning given in AS 12.55.185.

(c) A disciplinary action allowed under this section may be taken by itself or in conjunction with one or more other disciplinary actions allowed under this chapter.

ANALYSIS: This section provides guidance on the possible disciplinary actions the department may take in the event a licensee has violated a section of this chapter.

Sec. 06.60.210. Suspension or revocation related to fund. (a) When an award is made from the fund, the department may suspend or revoke the license of the originator licensee whose actions formed the basis of the award.

(b) The department shall lift a suspension made under (a) of this section if the originator licensee reaches an agreement with the department on terms and conditions for the repayment to the fund of the money awarded to the claimant and the costs of hearing the fund claim. The department may reimpose the suspension if the originator licensee violates the terms of a repayment agreement entered into under this subsection.

ANALYSIS: If a claim is made pursuant to the surety fund, the department may suspend an originator licensee if they violate the terms of the finding of the claim.

Sec. 06.60.230. Divestment. If the department has revoked a mortgage license, the mortgage licensee shall divest itself of all outstanding loans that were issued under this chapter by selling or assigning them to another mortgage licensee, except that the divestment must be approved by the department.

ANALYSIS: This section is to ensure that all accounts only go to a licensed entity, or to an entity that is exempt under this chapter. The purpose is to make sure that no consumer has a mortgage loan being serviced by a company that is not licensed or regulated.

Sec. 06.60.240. 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 any fees, restitution, and civil penalties owing under this chapter.

ANALYSIS: If the department revokes a license, it will work with the entity to correct deficiencies in order for the department to reinstate the license.

Sec. 06.60.250. Investigation and examination. (a) The department may investigate and examine the affairs, business premises, and records of a person required to be licensed under this chapter to determine compliance with this chapter, regulations adopted under this chapter, AS 06.01, and applicable regulations adopted under AS 06.01. Notwithstanding AS 06.01.015, the department may conduct an examination at least once every 36 months, or sooner, if the examination is part of the review of a complaint or other information received by the department against the licensee.

(b) For the purposes of conducting an examination under this section, the department

- (1) shall have free access to the place of business, books, accounts, safes, and vaults of the licensee to examine and make copies as necessary;
 - (2) may conduct the examination without prior notice to the licensee; and
 - (3) may examine, under oath or affirmation, all persons whose testimony the department may require to conduct the examination.
- (c) For the purpose of hearings, investigations, or other proceedings under this chapter and except as otherwise provided in this chapter, the department or an officer designated by the department may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the department considers relevant or material to the inquiry.
- (d) If a person refuses to comply with a subpoena, the superior court, on application by the department, may issue to the person an order requiring the person to appear before the department to produce documentary evidence or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt order.
- (e) The department may share information received or collected during an examination, investigation, or other proceeding with other law enforcement agencies.
- (f) A person shall reimburse the department reasonable costs incurred by the department to conduct an examination under this section. The reimbursement under this subsection may not exceed the rate of \$75 an hour for the examination, plus travel costs, including a per diem allowance that does not exceed the per diem allowance for employees of the state under AS 39.20.110.

ANALYSIS: This section allows the department to conduct routine compliance examinations of the mortgage licensee to determine their compliance with housing laws and mortgage laws. The purpose is to identify if there is a problem with the licensee, and attempt to correct any weaknesses in the operations of the licensee.

Sec. 06.60.260. Revocation, removal, or suspension of originator licensee. If the department finds that an originator licensee is dishonest, reckless, or incompetent when operating as an originator, or fails to comply with applicable law, with regulations or orders of the department, or with written requirements or instructions of the department relating to the originator license, the department may revoke or suspend the originator licensee, remove the originator licensee from operating as an originator in the state, or order a person licensed under this title to remove the originator licensee from operating as an originator for the person.

ANALYSIS: If an originator licensee has been found to have conducted themselves in violation of this chapter, the department has the option to discipline the originator by temporarily suspending or removing them being licensed, or by a complete ban from the industry. The department's imposition on such a violation would depend on the severity of the violation. As with other decisions by the department, the originator would have rights to appeal the decision of the department.

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Sec. 06.60.270. Removal by entity. A mortgage licensee shall remove an originator licensee from operating as an originator for the mortgage licensee if the department directs the mortgage licensee to remove the originator licensee under AS 06.60.260.

ANALYSIS: The department may also direct a mortgage licensee to remove an originator licensee who has been found by the department to be in violation of this chapter. If the mortgage licensee did not follow the department's order, an action can be brought against the mortgage licensee.

Sec. 06.60.280. Department list. The department shall make available to the public a list of all licensees who have been censured, barred, or had their licenses suspended or revoked under this chapter. The department shall publish the list on a monthly basis.

ANALYSIS: The department will publish a list to be circulated to the general public of any actions the department has taken against a licensee. This is similar to the way the Securities and Exchange Commission provides information on securities professionals to the public about any punitive action or enforcement actions it has taken against them for violation of securities law.

Article 5. Business Duties and Restrictions.

Sec. 06.60.320. False, misleading, or deceptive advertising prohibited. A person may not advertise, print, display, publish, distribute, broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner a statement or representation with regard to the rates, terms, or conditions for a mortgage loan that is false, misleading, or deceptive.

ANALYSIS: This provides recourse to the department to allow it to take enforcement actions against a licensee that publishes untruthful, fraudulent, or intentionally deceitful information.

Sec. 06.60.330. Compliance with federal requirements. If the regulations apply to the person under federal law, a person shall conduct the person's mortgage loan activities in compliance with 12 CFR Part 226 and other regulations adopted by the federal government under

- (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of 1974);
- (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);
- (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);
- (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act);
- (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and
- (6) any other federal law or regulation.

ANALYSIS: This section provides the department with the ability to enforce federal laws that govern residential mortgage transactions. Instead of adopting new state laws that would have to be updated, through adoption, any changes in the federal law will

automatically pass to the department. As part of this seamless integration of changes, the department will be able to provide alerts to the industry of any changes.

Sec. 06.60.340. Prohibited activities. In addition to activities prohibited elsewhere in this chapter or by another law, a person who is a licensee, a person who is required to be licensed under this chapter, and a person who is licensed under AS 06.20 may not, in the course of a mortgage loan transaction,

- (1) misrepresent or conceal material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to enter into a mortgage loan transaction;
- (2) pursue a course of misrepresentation through an agent;
- (3) improperly refuse to issue a satisfaction of a mortgage loan;
- (4) fail to account for or deliver to a person money, a document, or another thing of value obtained in connection with a mortgage loan, including money provided for a real estate appraisal or a credit report if the person is not entitled to retain the money under the circumstances;
- (5) pay, receive, or collect, in whole or in part, a commission, fee, or other compensation for brokering a mortgage loan in violation of this chapter, including a mortgage loan brokered by an unlicensed person other than an exempt person;
- (6) fail to disburse money in accordance with a written commitment or agreement to make a mortgage loan;
- (7) engage in a transaction, practice, or course of business that is not engaged in by the person in good faith or fair dealing or that constitutes a fraud on a person in connection with the brokering, making, purchase, or sale of a mortgage loan;
- (8) influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan; this paragraph does not prohibit a person from asking an appraiser to
 - (A) consider additional appropriate property information;
 - (B) provide further detail, substantiation, or explanation for the appraiser's value determination;or
 - (C) correct errors in the appraisal report;
- (9) in a loan commitment or prequalification letter, make a false or misleading statement, or omit relevant information or conditions that the person knew or reasonably should have known from a preliminary examination of the borrower's loan application, credit report, assets, and income, except that this paragraph does not apply if
 - (A) the borrower made a false or misleading statement or omitted relevant information in the loan application that the person relied on when issuing the loan commitment or prequalification letter; or
 - (B) the person funds the loan at the rate, terms, and costs stated in the good faith estimate provided to the borrower at the time the prequalification letter was issued or the loan commitment was made;
- (10) engage in a practice or course of business in which the ultimate rates, terms, or costs of mortgage loans are materially worse for the borrowers than they are represented to be in the first good faith estimates the person provides to the borrowers; this paragraph does not apply if

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- (A) the person's generally published or advertised rates, terms, or costs, if any, change for a borrower's loan program; or
- (B) new or changed information from the borrower makes it necessary to change the loan program offered to the borrower;
- (11) represent that the person has a license, title, certification, sponsorship, approval, status, affiliation or connection that the person does not have;
- (12) engage in unfair, deceptive, or fraudulent mortgage loan practices or advertising established by the department in regulation.

ANALYSIS: In this section, additional actions or activities are added that would be considered a violation of this chapter for either a mortgage licensee or originator licensee.

Sec. 06.60.350. Certain refinancing prohibited. (a) A covered person may not refinance a mortgage loan within 12 months after the date the mortgage loan is closed, unless the refinancing is beneficial to the borrower.

(b) The factors to be considered when determining if refinancing is beneficial to the borrower under (a) of this section may include

- (1) the borrower's new monthly payment is lower than the total of all monthly obligations being refinanced, after taking into account the costs and fees of the refinancing;
- (2) the amortization period of the new mortgage loan is different from the amortization period of the mortgage loan being refinanced;
- (3) the borrower receives cash in excess of the costs and fees of the refinancing;
- (4) the rate of interest of the borrower's promissory note is reduced;
- (5) the mortgage loan changes from an adjustable rate loan to a fixed rate loan after taking into account costs and fees;
- (6) the refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction;
- (7) the original term of the mortgage loan being refinanced is two years or less; and
- (8) the refinancing is being made to prevent a foreclosure on an existing mortgage loan.

ANALYSIS: This section defines when a loan can be refinanced. It is intended to limit rolling-refinances where the only intent is to generate fees for the licensees.

Sec. 06.60.360. Escrow accounts. (a) A covered person and a borrower may agree that the covered person will keep in an escrow account all money that the borrower is required to pay to defray future taxes or insurance premiums or for other lawful purposes. The escrow account must be segregated from the other accounts of the covered person. The covered person may not commingle the borrower's money with the general funds of the covered person. Money deposited in an escrow account under this subsection shall be maintained in the account until it is disbursed in accordance with a written escrow agreement.

(b) A covered person may not require a borrower to pay money into escrow to defray future taxes, to defray insurance premiums, or for another purpose, in connection with a subordinate

mortgage loan, unless an escrow account for that purpose is not being maintained for the mortgage loan that is superior to the subordinate mortgage loan.

(c) If the billing address of a covered person who is holding money in escrow for insurance premiums changes, the covered person shall notify the insurer in writing about the changed billing address within 30 days after the change, or 60 days before the renewal date of the insurance policy, whichever is later.

(d) A covered person who accepts money belonging to a borrower in connection with a mortgage loan shall deposit all of the money into an escrow account maintained by the covered person in a bank or another recognized depository institution. In this subsection, "recognized depository institution" means a person who is organized as a financial institution under the laws of a state or the federal government and whose deposits are insured by a federal agency.

(e) Money held in an escrow account under this section is exempt from execution, attachment, or garnishment under AS 09.38 and is not subject to a claim under AS 09.38.065.

ANALYSIS: This section provides guidelines for mortgage licensees for record keeping in the event they provide escrow services as part of servicing a loan. Depending on the type of mortgage, some require reserves to be paid with each monthly payment and be stored in an escrow account to pay annual real property taxes and property insurance.

Sec. 06.60.370. Criminal liability of licensee. (a) In addition to the authority provided in AS 06.60.880, the department may report the violations of (b) - (e) of this section to the attorney general, who may institute the proper proceedings to enforce the criminal penalties provided in (b) - (e) of this section.

(b) A person who knowingly provides false or misleading information to the department that is material under this chapter is guilty of a class A misdemeanor.

(c) A licensee or person who is exempt under AS 06.60.015 who knowingly fails to account for or deliver to a person money, deposits, or checks or other forms of negotiable instruments in violation of the provisions of this chapter is guilty of a class A misdemeanor.

(d) A licensee who knowingly fails to disburse without just cause money belonging to the borrower is guilty of a class A misdemeanor.

(e) A mortgage lender, mortgage broker, or originator who knowingly operates without a license or is not exempt under AS 06.60.015 is guilty of a class A misdemeanor.

ANALYSIS: This is a new section intended to provide notice of criminal penalties for licensees who violate this chapter.

Sec. 06.60.380. Definition of "covered person." In AS 06.60.320 06.60.380, "covered person" means a mortgage licensee or a person who is licensed under AS 06.20.

ANALYSIS: Provides definition for this article of the chapter.

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Article 6. Enforcement.

Sec. 06.60.400. Cease and desist orders. The department may issue, under AS 06.01.030, an order directing a person to cease and desist. The department shall determine the form and content of the order.

ANALYSIS: This section provides the department with the ability to issue orders to a licensee to stop them from conducting activities that violate any portion of this chapter.

Sec. 06.60.410. Censure, suspension, or bar. (a) In addition to any other remedy provided under this chapter, the department may, by order after appropriate notice and opportunity for a hearing, censure a person, suspend the license of a person for a period not to exceed 12 months, or bar a person from a position of employment, management, or control of a licensee, if the department finds that

- (1) the censure, suspension, or bar is in the public interest;
 - (2) the person has knowingly committed or caused a violation of this chapter or a regulation adopted under this chapter; and
 - (3) the violation has caused material damage to the licensee or to the public.
- (b) When the person who is the subject of a proposed order under this section receives a notice of the department's intention to issue an order under this section, the person is immediately prohibited from engaging in any activities for which a license is required under this chapter.
- (c) A person who is suspended or barred under this section is prohibited from participating in a business activity of a licensee and from engaging in a business activity on the premises where a licensee is conducting the licensee's business. This subsection may not be construed to prohibit a suspended or barred person from having the person's personal transactions processed by a licensee.

ANALYSIS: This section allows the department to take additional actions to remove a licensee who exhibited conduct that warrants protection of the public by removing from the mortgage industry.

Sec. 06.60.420. Civil penalty for violations. (a) A person who violates a provision of this chapter or a regulation adopted under this chapter is liable for a civil penalty not to exceed \$10,000 for each violation.

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

ANALYSIS: This section allows the department to impose fines for violation of this chapter.

Sec. 06.60.430. Additional enforcement provisions, actions, and rights. (a) The department may treat a licensee as a financial institution under AS 06.01 when applying the enforcement provisions of AS 06.01.

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

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

(d) In addition to another investigation allowed under this chapter, the department may conduct other examinations, periodic audits, special audits, investigations, and hearings as may be necessary and proper for the efficient administration of this chapter.

Article 7. Originator Surety Fund.

Sec. 06.60.500. Originator surety fund. The originator surety fund is established as a separate account in the general fund.

ANALYSIS: The surety fund is established to cover consumer losses in the event an originator commits an illegal activity. The fund collects fees from originators and is administered by the department.

Sec. 06.60.510. Composition of fund. The fund consists of payments made by originator licensees under AS 06.60.550, filing fees retained under AS 06.60.620, income earned on the investment of the money in the fund, and money deposited in the fund by the department under AS 06.60.740.

ANALYSIS: This section defines the creation of the fund. It also defines the sources of funding for the fund.

Sec. 06.60.520. Use of fund. The legislature may appropriate the money collected in the fund under AS 06.60.510 to the department to implement AS 06.60.500 - 06.60.750, including paying claims, holding hearings, and incurring legal expenses and other expenses directly related to fund claims and the operations of the fund or for any other public purpose. Nothing in AS 06.60.500 - 06.60.750 creates a dedicated fund.

ANALYSIS: This section specifies when funds can be used and the process which must be followed.

Sec. 06.60.530. Fund report. Every six months the department shall make a written report on the activities of the fund, the balances in the fund, interest earned on the fund, and interest returned to the fund.

ANALYSIS: This section specifies when funds can be used and the process which must be followed.

Sec. 06.60.540. Approval required. (a) The department must approve a fund expenditure that is used to prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a service to a member of the public, to a licensee, to a potential licensee, or to another person.
(b) In (a) of this section, "an item or a service" includes an information pamphlet, an examination preparation packet, an educational course, the certification of a continuing education course, and an instructor for a continuing education course.

ANALYSIS: This section insures that only justified expenses can be charged against the fund. Any use of the fund other than to pay claims must be limited.

Sec. 06.60.550. Required fund fees. (a) A person who applies for or renews an originator license shall pay to the department, in addition to the fees required by AS 06.60.035, a fund fee not to exceed \$150.
(b) Every two years, if the department determines that the average balance in the fund during the previous two years was less than \$250,000 or more than \$500,000, the department shall, unless the department waives the adjustment, adjust the fund fee so that the average balance of the fund during the next two years is anticipated to be an amount that is not less than \$250,000 or more than \$500,000. In this subsection, "average balance" means the average balance in the fund after the department deducts anticipated expenditures for claims against the fund and for hearing and legal expenses directly related to fund operations and claims.
(c) At least once a month, the department shall pay the fees collected under this section into the general fund. These payments shall be credited to the fund.
(d) Notwithstanding (a) of this section, an originator licensee who obtains an initial originator license when the department has reduced the fund fee to nothing shall nonetheless pay a fund fee of \$150 to the department each of the first two years of the originator license or, for a mortgage licensee, of operating as an originator.

ANALYSIS: This section insures that only justified expenses can be charged against the fund. Any use of the fund other than to pay claims must be limited.

Sec. 06.60.560. Claim for reimbursement. In addition to any other remedies available to the person, a person may seek reimbursement for a loss suffered in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by an originator licensee and is eligible to be reimbursed under AS 06.60.500 - 06.60.750 for the loss from money appropriated for that purpose.

ANALYSIS: This section establishes the process for a consumer to file a claim against the fund. The consumers' loss must have been from an illegal activity of the originator.

Sec. 06.60.570. Submission of fund claim. To seek reimbursement under AS 06.60.560, a person shall submit a fund claim to the department for the reimbursement on a form furnished by the department. The person must file the fund claim within two years after the occurrence of the fraud, misrepresentation, deceit, or conversion that is claimed as the basis for the reimbursement.

ANALYSIS: This section provides the method for the consumer to submit their claim, and also provides time limitations for a claim to be filed.

Sec. 06.60.580. Form and contents of fund claim. The form for a fund claim shall be executed under penalty of unsworn falsification and must include

- (1) the name and address of each originator licensee involved;
- (2) the amount of the alleged loss;
- (3) the date or period of time during which the alleged loss occurred;
- (4) the date when the alleged loss was discovered;
- (5) the name and address of the claimant; and
- (6) a general statement of the facts related to the fund claim.

ANALYSIS: This section sets out the minimum information necessary for the department to process a consumer's claim. The information is necessary for the department to begin its investigation.

Sec. 06.60.590. Claim hearing. Except as otherwise provided by AS 06.60.610, a hearing on a fund claim shall be handled by the office of administrative hearings (AS 44.64.010).

ANALYSIS: This provides an impartial process to adjudicate a claim from a consumer. A similar system has successfully worked for handling ANSCA claims.

Sec. 06.60.600. Filing and distribution of claim. At least 20 days before a hearing is held on the fund claim by the office of administrative hearings (AS 44.64.010), the department shall send a copy of the claim filed with the department to

- (1) each originator licensee alleged to have committed the misconduct resulting in the alleged loss;
- (2) the employer of the originator licensee alleged to have committed the conduct resulting in the alleged loss; and
- (3) any other parties involved in the mortgage loan transaction that is the subject of the fund claim.

ANALYSIS: This section sets forth the procedural process for claims to be notice to all parties. This will allow all parties to participate in the hearing process.

Sec. 06.60.610. Election to use small claims court. (a) Within seven days after receiving a copy of a fund claim under AS 06.60.600, each originator licensee against whom the claim is made

Sec. 06.60.650. Standards of proof. A person who submits a fund claim under AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that the person who filed the fund claim suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the conversion of trust funds by an originator licensee and the extent of those losses.

ANALYSIS: This section establishes the level of proof required to substantiate a claim. The claim must be sufficient that a person can reasonable asses if a violation of law has occurred.

Sec. 06.60.660. Postponement. The department may postpone its consideration of a fund claim until after a hearing under AS 06.60.200 or 06.60.590 or until the completion of a pending or contemplated court proceeding.

ANALYSIS: This section allows the department to wait and receive a decision from a hearing officer prior to making a decision on a claim. This gives the department the opportunity to postpone its decision in order to ensure that all the facts and applicable law has been review per the administrative procedures act.

Sec. 06.60.670. Nonapplication. AS 06.60.630 - 06.60.660 do not apply to a fund claim that is dismissed under AS 06.60.610.

ANALYSIS: This section gives the department the ability to set aside a decision.

Sec. 06.60.680. Findings and payment. (a) At the conclusion of the department's consideration of a claim made under AS 06.60.570, the department shall issue a written report that provides the department's findings of fact and conclusions of law.

(b) If the department determines that the claimant has suffered a loss in a mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the wrongful conversion of money by an originator licensee, the department may award the person who filed the fund claim reimbursement from money appropriated to the fund for the claimant's loss.

ANALYSIS: If a decision is reached, this section sets out the method for payment and processing of the claim.

Sec. 06.60.690. Fund operations. The department may charge fund operation hearing and legal expenses from money appropriated to the department for the purpose. The department shall deposit into the fund money that the department recovers for these expenses from the originator licensee under AS 06.60.745. The department may not consider amounts paid from the fund for hearing or legal expenses when determining the maximum reimbursement to be awarded under AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

ANALYSIS: This section provides the department with the ability to recover funds for use in payment of future claims

Prepared on: April 17, 2007

Prepared by: Roger W. Prince, Division of Banking and Securities

Sec. 06.60.700. Payment of small claims judgment. (a) If a fund claim originally filed with the department is dismissed and heard as a small claims action under AS 06.60.610 and the person who filed the fund claim is awarded money in the small claims action against an originator licensee, the department may pay, subject to AS 06.60.710 and 06.60.720, any outstanding portion of the small claims judgment from money appropriated to the department for the purpose.

(b) Before making payment under (a) of this section, the person who received the award shall file with the department a copy of the final judgment and an affidavit stating that more than 30 days have elapsed since the judgment became final and that the judgment has not yet been satisfied by the originator licensee against whom the award was made.

(c) After the department pays a small claims judgment under this section, the department is subrogated to the rights of the person to whom the money was awarded under the judgment.

ANALYSIS: This section allows the department to accept the decision from the Small Claims Court and also requires the subrogation of the claim to the department. This allows the department to attempt to recover the amount of the claim from the licensee.

Sec. 06.60.710. Maximum liability. (a) Payment of a fund claim may not exceed \$15,000 for each claimant, except that the payment may not exceed a total of \$15,000 for each mortgage loan transaction regardless of the number of persons injured or the number of pieces of residential property involved in the mortgage loan transaction.

(b) The maximum liability for fund claims against one originator licensee may not exceed \$50,000.

(c) If the \$50,000 liability under (b) of this section is insufficient to pay in full the valid fund claims of all persons who have filed fund claims against one originator licensee, the \$50,000 shall be distributed among the claimants in the ratio that their individual fund claims bear to the aggregate of valid fund claims, or in another manner that the department considers equitable. The department shall distribute the money among the persons entitled to share in the recovery without regard to the order in which their fund claims were filed.

ANALYSIS: This section specifies the maximum amount of any one claim.

Sec. 06.60.720. Order of fund claim payment. If the money appropriated to the department for the purpose is insufficient at a given time to satisfy an award under AS 06.60.680 for a fund claim, the department shall, when sufficient money has been appropriated to the department for the purpose, satisfy unpaid fund claims in the order that the fund claims were originally filed, plus accumulated interest at the rate allowed under AS 45.45.010(a).

ANALYSIS: This section is to establish a procedure if claims exceed the fund balance, the department will pay them in order of process without seeking funds from the general fund of the State budget.

Sec. 06.60.730. False claims or documents. A person who files with the department a notice, statement, or other document required under AS 06.60.500 - 06.60.750 that contains a wilful material misstatement of fact is guilty of a class A misdemeanor.

ANALYSIS: This section provides penalties for any person that files false documents with the state can be subject to a criminal charge.

Sec. 06.60.740. Right to subrogation. When the department has paid to a claimant the sum awarded by the department, the department shall be subrogated to all of the rights of the claimant to the amount paid, and the claimant shall assign all right, title, and interest in that portion of the claim to the department. Money collected by the department on the claim shall be deposited in the fund.

ANALYSIS: If a claim is paid, the department will have the claimant subrogate their claim to the enable the department to pursue collection against the licensee. The funds recovered will be used to repay the surety fund.

Sec. 06.60.745. Reimbursement for expenses. If the department pays all or a portion of a fund claim against an originator licensee under AS 06.60.680 or 06.60.700, the department may recover from the originator licensee, in addition to the payment of the fund claim, the expenses incurred by the department to process and otherwise handle the fund claim.

ANALYSIS: This section provides the department with a method to collect fees and costs from the fund in order to repay the budget of the department for amount expended on the behalf of the claims.

Sec. 06.60.750. Disciplinary action against an originator licensee. Repayment in full of all obligations to the fund does not nullify or modify the effect of disciplinary proceedings brought against an originator licensee under this chapter.

ANALYSIS: This section is intended to notify a licensee that satisfaction of monetary damages does not absolve them of responsibility under other sections of this chapter.

Article 8. Program Administration Fee.

Sec. 06.60.800. Authorization of program administration fee. (a) The department may collect a program administration fee of \$10 for each mortgage loan transaction to reimburse the state for the cost of administering this chapter.

(b) The program administration fee shall be paid by the borrower who is providing real property as security for the mortgage loan, except that, if the regulations of a federal or state loan program that insures the loan and that applies to the mortgage loan transaction prohibits the borrower from paying the program administration fee, another party to the mortgage loan transaction shall pay the program administration fee.

(c) If there are multiple mortgage loan instruments recorded for a single mortgage loan transaction, the department shall collect only one program administration fee.

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

ANALYSIS: This section provides the department with funding based on the payment for each residential mortgage deed of trust that is recorded in the state.

Sec. 06.60.810. Payment and use of fees. (a) The department shall coordinate with the Department of Natural Resources to collect the program authorization fee.

(b) The program authorization fee shall be charged when payment is made to the Department of Natural Resources for recording a document under AS 44.37.025.

(c) The program authorization fees collected under (b) of this section shall be separately accounted for and may be appropriated by the legislature to the department for the operation of this chapter.

ANALYSIS: This section sets forth how the fees will be collected and also provides for its use to offset the cost of the department's operations.

Article 9. Duties and Powers of the Department.

Sec. 06.60.850. Publication of disciplinary action. The department may release for publication in a newspaper of general circulation in the locale of a licensee's principal office notice of disciplinary action taken by the department against the licensee.

ANALYSIS: The purpose is to provide consumers with information about any disciplinary action the department has enforced against a licensee.

Sec. 06.60.860. Fingerprinting. The department may forward fingerprints provided under this chapter to the Department of Public Safety for submission to the Federal Bureau of Investigation for a report by the Federal Bureau of Investigation.

ANALYSIS: This section grants the department authority to conduct a background investigation in order to determine if the applicant is in or has previously violated the laws of other states.

Sec. 06.60.870. Authority of department. The department may make a ruling, demand, or finding that the department determines is necessary for the proper conduct of a licensee's business regulated by this chapter or for the enforcement of this chapter. The ruling, demand, or finding must be consistent with this chapter.

ANALYSIS: This section requires the department to make decisions that are consistent in their interpretation of this chapter.

Sec. 06.60.880. Peace officer powers. (a) A person employed by the department for the administration and enforcement of this chapter may, with the concurrence of the commissioner of public safety, exercise the powers of a peace officer when those powers are specifically granted to the person by the department.

(b) A person may exercise a power granted by the department under (a) of this section only when necessary for the enforcement of the criminally punishable provisions of this chapter, regulations adopted under this chapter, and other criminally punishable laws and regulations, including the investigation of violations of laws against theft under AS 11.46.100 -11.46.150, fraud under AS 11.46.600, misapplication of property under AS 11.46.620, and deceptive business practices under AS 11.46.710.

ANALYSIS: This section provides certain qualified members of the department the right under police powers to independently investigate complaints and enforce certain criminal laws under AS 11. In addition, it allows qualified members of the department to make application for search warrants, arrest warrants, and other court granted authority.

Article 10. Miscellaneous Provisions.

Sec. 06.60.890. Application to Internet activities. This chapter applies to a person even if the person is engaging in the activities regulated by this chapter by using an Internet website from within or outside the state.

ANALYSIS: This section applies the chapter to web-based businesses and requires them to be licensed if they meet the licensing requirements. It also grants the department the ability to review on-line transactions.

Sec. 06.60.895. 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.

ANALYSIS: If a licensee has their license revoked, suspended or is required to surrender their license, it does not have any affect on contract that existed at the time they were licensed.

Sec. 06.60.900. Applicability of administrative procedures. The provisions of AS 44.62 (Administrative Procedure Act) apply to an action of the department to deny, revoke, or suspend a license under this chapter, to censure, suspend, or bar a person under AS 06.60.410, to take other disciplinary action under this chapter, to hold hearings, and to issue orders.

ANALYSIS: This section allows the department to use AS 44.62 in its enforcement of this chapter.

Sec. 06.60.905. Untrue, misleading, or false statements. A person may not, in a document filed with the department or in an examination, an investigation, a hearing, or another proceeding under this chapter, make or cause to be made, an untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading or false.

ANALYSIS: This section gives the department discretion in the event it is determined that a licensee provided information that is erroneous.

Sec. 06.60.910. Regulations. The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

ANALYSIS: This section gives the department discretion in the event it is determined that a licensee provided information that is erroneous.

Sec. 06.60.920. Relationship to federal and other state law. (a) If a provision of this chapter is preempted by or conflicts with federal law in a particular situation, the provision does not apply to the extent of the preemption or conflict.

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

ANALYSIS: This section provides that this chapter shall govern, even if it conflicts with other section of law.

Article 11. General Provisions.

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

- (1) "agent" does not include a person who is a state employee when acting in the capacity of a state employee;
- (2) "borrower" means an individual who receives a mortgage loan;
- (3) "broker" means to operate as a mortgage broker;
- (4) "department" means the Department of Commerce, Community, and Economic Development;
- (5) "escrow account" means an account

- (A) to which a borrower makes payments for obligations related to the real property that is the subject of a mortgage loan of the borrower;
- (B) held by a third person; and
- (C) from which the third person identified in (B) of this paragraph disburses money in accordance with a written agreement to pay obligations related to the real property that is the subject of a mortgage loan of the borrower.
- (6) "fund" means the originator surety fund established by AS 06.60.500;
- (7) "fund claim" means a claim authorized under AS 06.60.560;
- (8) "fund fee" means the fee that is required to be paid by AS 06.60.550;
- (9) "knowingly" has the meaning given in AS 11.81.900;
- (10) "license" means a license issued under this chapter;
- (11) "licensee" means a person who holds a license issued under this chapter;
- (12) "mortgage broker" means a person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, by telephone, by electronic means, by mail, through the Internet, in person, or by the person itself or an originator who is an employee or under exclusive contract to the person,
 - (A) arranges with a variety of lending sources, who may be private lenders, institutional investors, or wholesale lenders, to provide financing for mortgage loans; or
 - (B) assists or offers to assist a borrower or potential borrower to obtain financing for mortgage loans;
- (13) "mortgage lender" means a person who consummates and funds a mortgage loan and who is named as the payee in the promissory note and as the beneficiary of the deed of trust; "mortgage lender" does not include a subsequent purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a licensee under this chapter;
- (14) "mortgage lender license" means a license issued under this chapter to operate as a mortgage lender;
- (15) "mortgage lender licensee" means a person who holds a mortgage lender license;
- (16) "mortgage license" means a mortgage lender license or a mortgage broker license;
- (17) "mortgage licensee" means a mortgage lender licensee or a mortgage broker licensee;
- (18) "mortgage loan"
 - (A) means a loan made to an individual if the proceeds are to be used primarily for personal, family, or household purposes and if the loan is secured by a mortgage or deed of trust on an interest in a residential owner-occupied property for one to four family units located in the state and regardless of where the loan is made;
 - (B) includes the renewal or refinancing of a loan;
 - (C) does not include loans
 - (i) or extensions of credit to buyers of real property for a part of the purchase price of the property by persons selling the property owned by them;
 - (ii) to persons related to the lender by blood or marriage;
 - (iii) to persons who are employees of the lender; or
 - (iv) made primarily for a business, commercial, or agricultural purpose of the borrower or for construction of residential property;
- (19) "operate" means do business, offer to provide, or provide;
- (20) "originator"

Prepared on: April 17, 2007

Prepared by: Roger W. Prince, Division of Banking and Securities

- (A) means a natural person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, by telephone, by electronic means, by mail, or in person
- (i) interviews the consumer in connection with the consumer's application for a mortgage loan;
 - (ii) accepts or offers to accept an application for a mortgage loan from a potential borrower;
 - (iii) solicits or offers to solicit a mortgage loan for a potential borrower;
 - (iv) negotiates or offers to negotiate the terms or conditions of a mortgage loan with or for a borrower or potential borrower; or
 - (v) issues or offers to issue to borrowers, potential borrowers, or the representatives of borrowers or potential borrowers, mortgage loan commitments, interest rate agreements, interest rate guarantees, prequalification letters, or commitments to finance up to a stated amount of the value of real property, or 90-percent letters to finance up to a stated amount of the value of real property;
- (B) does not include employees of a mortgage licensee, or employees of a person who is exempt from licensure under AS 06.60.015, who perform clerical duties in connection with mortgage loan transactions, collect financial information and other related documents that are part of the application process, order verifications of employment, verifications of deposits, requests for mortgage payoffs, and other loan verifications, appraisals, inspections, or engineering reports, or perform the functions of a mortgage loan processor, at the direction of and subject to the supervision of the mortgage licensee, a mortgage originator, or the person exempt from licensure.
- (21) "originator license" means a license issued to a person to operate as an originator;
 - (22) "originator licensee" means a person who holds an originator license;
 - (23) "program administration fee" means the fee described under AS 06.60.800(a);
 - (24) "records" includes books, accounts, papers, files, and other records;
 - (25) "residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

ANALYSIS: This provides for definition to be in interpretation of this chapter.

Sec. 06.60.995. Short title. This chapter may be known as the Mortgage Lending Regulation Act.

* **Sec. 3.** AS 09.38.015 is amended by adding a new subsection to read:

(e) Money held in an escrow account under AS 06.60.360 is exempt.

* **Sec. 4.** AS 09.38.065(a) is amended to read:

(a) Subject to AS 06.60.360(e), and notwithstanding [NOTWITHSTANDING] other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes;

(2) a creditor may make a levy against exempt property to enforce a claim for

- (A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;
 - (B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and
 - (C) a special assessment imposed to defray costs of a public improvement benefiting the property; and
- (3) a creditor may make a levy against exempt property of any kind to enforce the claim of a victim, including a judgment of restitution on behalf of a victim of a crime or a delinquent act, if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency, except that the debtor is entitled to an exemption in property
- (A) not to exceed an aggregate value of \$3,000 chosen by the debtor from the following categories of property:
 - (i) household goods and wearing apparel reasonably necessary for one household;
 - (ii) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and
 - (iii) family portraits and heirlooms of particular sentimental value to the debtor; and
 - (B) not to exceed an aggregate value of \$2,800 of the debtor's implements, professional books, and tools of the trade.

* Sec. 5. AS 44.62.330(a) is amended by adding a new paragraph to read:

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

* Sec. 6. AS 44.64.030(a)(5) is amended to read:

(5) AS 06 (banks, [AND] financial institutions, and fund claims), except as provided otherwise by AS 06.60.590;

* Sec. 7. AS 45.50.471(b) is amended by adding a new paragraph to read:

(52) violating AS 06.60.010 -06.60.380 (mortgage lending regulation);

* Sec. 8. AS 45.50.481 is amended by adding a new subsection to read:

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

* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to read: **TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND MORTGAGE BROKERS.** Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a person who is engaging in activities for which a license is required under AS 06.60, enacted by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section, "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to read: **TRANSITION: REGULATIONS.** The Department of Commerce, Community, and Economic Development may proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2008.

* Sec. 11. Section 10 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect July 1, 2008.

Memorandum: HB 162 Mortgage Licensing: Major Changes Between Version K and Version O Prepared: April 18, 2007 by the Division of Banking and Securities.

(S L&C note: HB 162 version K is identical to SB 102 version A, and CSHB 162 (L&C) version O is identical to CSSB 102 (blank) version C.

- Exemption for companies already licensed under Alaska's Small Loan Act at page 1, line 4, of the Introduction.
- Modification of exemption language for federally regulated financial institutions is made at two places:
- Amend (a)(2) to read include in the exemption listing: bank holding company, savings and loan association, and trust company with banking powers.
- Amend (a) (3) at page 2 Line 31 Section 06.60.015 to read as follows:
“(3) a subsidiary or an operating subsidiary of a person who is identified by (1) of this subsection, or of a bank holding company or savings and loan holding company, if the subsidiary or operating subsidiary certifies to the department on a form provided by the department that the subsidiary or operating subsidiary is exempt from this chapter because of applicable federal statute or regulation.
- The bill was amended so that it would not cover require change of control notifications for large publicly traded corporations by making a change at page 4, Line 2 Section 06.60.020
- Similar changes were made changes in control of an LLC.
- Sec. 06.60.065 (3)(E) originally allowed denial of an originator license only if a person violated a provision of the chapter. Language was added clarifying that a violation of a regulation adopted under the chapter, or an order of the department under the chapter, are also a basis for denial of a license.
- Section 06.60.145 (page 14 lines 18-31) was changed to clarify situations where a disqualified person may not be associated with or employed by a mortgage licensee.
- Sections 60.60.157 and 159 were added at page 15 by Law to ensure that all licensees perform origination services through an originator and to state that a mortgage licensee may be held liable for the conduct of an originator.
- Section 06.60.340 (at page 21, line 2) was amended with language to state that a licensee may not represent that they have a professional certification that do not actually have or engage in deceptive advertising.
- Sec. 06.60.370 (b) – (d) are changed to clarify that the crimes described are class A misdemeanors and eliminates references to imposition of fines or imprisonment. Class A misdemeanors are already defined in the criminal code to carry certain fines and imprisonment. so the references in the statute are not necessary.
- Sec. 06.60.990 (5) (D) definition of “escrow account” was changed to clarify that money disbursed from an escrow account must be in accordance with a written agreement.

SB 102

Testimony for ~~HB 102~~
Finance Committee
4/19/07

I appreciate the opportunity to give testimony on the mortgage licensing bill.

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

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

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

I am a member of the Predatory Lending Task Force in Anchorage representing the Alaska Association of Mortgage Brokers. I sit on their Advisory Board and I am on their Education and Legislative Committees.

Presently I'm the owner of a small mortgage company and have two originators working with me.

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

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

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

To that end, I was part of a small group of people that wanted to start an organization to promote professionalism, high ethics and licensing of the mortgage industry in Alaska. We organized and started AKAMB as an affiliate of the National Association of Mortgage Brokers (NAMB) because they espouse the same things we desire. NAMB has

John Martin Testimony

a Code of Ethics that all must adhere to in order to become a member, as well as Professional Designations that can be earned through their educational classes.

I presently hold the only "*Certified Mortgage Consultant*" designation from the National Association of Brokers, in Alaska.

Alaska is the last state to license mortgage operations. The people that work here in the state day after day and interface with the public recognize the need for this legislation.

Just looking at the local news media in the last year, we can see that our great state is not exempt from unscrupulous operators. While we know a lot of the problem is the result of out of state operations, a few people here have chosen to try and take advantage of our state. Please see the enclosures.

Many people have worked hard and put in lots of unpaid hours to come up with a bill that makes sense and at the same time does not put undue hardship on small business. These are your local people that live and work here in Alaska. They don't really want to be licensed, but, it's pretty obvious to us that it is the best interest of our Alaskan consumers for us to be licensed.

Licensure would clearly put everyone on an even playing field. Background checks, competency testing and continuing education will go a long way to serving the public.

The licensure of mortgage entities clearly gives the state the powers needed to protect our state. Along with the licensure of mortgage loan originators, the state has the power of accountability directly with the person who interfaces with the general public with the ability to revoke a license if necessary. Now that's accountability.

Many other professions associated with the real estate industry are already licensed by the state. Some have written letters of support for this legislation and recognize the necessity for this legislation (see attachments.)

Since we helped with the most recent changes to the bill for the new CS, we recommend that the committee adopt this new CS so we can protect our Alaskan consumers.

Respectfully submitted,

John Martin, CMCT[™]

John Martin Testimony



Resolution NO. 02-2007

A Resolution of the Mat-Su Home Builders Association to support HB 162
the Legislation to license mortgage lenders and originators

Whereas, the Mat-Su Home Builders Association Supports legislation to license
mortgage lenders and originators

Whereas, licensure of mortgage lenders and originators will help stop predatory
lending in Alaska

Whereas, Alaska is the last of the 50 states to license mortgage lenders and
originators and this is very much needed

Now Therefore, Be It Resolved, the Mat-Su Home Builders Association doe
hereby support HB 162 the licensure of Mortgage lenders and originators.

Hereby, adopted by the Board of Directors of the Mat-Su Home Builders
Association on this 20th day of March, 2007

Jeff Clements

President, Jeff Clements

Kyle Carr

Attested: Secretary, Kyle Carr



Alaska Chapter of the American Society of Home Inspectors
c/o Jim Foss, local chapter president
2440 E. Tudor Road, # 401
Anchorage, Alaska 99507
FAX/home office 907-569-0120
Cell 229-0419

April 9th, 2007

John Martin
Alaska Association of Mortgage Brokers
2805 Dawson Street, Ste 202
Anchorage, Alaska 99503

RE: House Bill 162 - Lender Licensing

Dear Sir;

The Alaska ASHI Chapter would like to express its support for to the development of standards for Mortgage Lenders. House Bill 162, the mortgage licensing bill, introduced in the Alaska House of Representatives by Representative Bob Lynn.

As president of the local chapter, I have asked for our members views on this issue. The overwhelming response was that our members agree (or had no position) with the statement that the *mortgage industry needs licensing controls*. The ASHI standards are the highest in the industry. Why should the lending industry have lower standards than those of other Real Estate Professionals? Builders are licensed, Realtors are licensed, Property Appraisers are licensed, and Home inspectors are licensed! Why not mortgage professionals?

Alaska ASHI generally believes that this would be an enhancement to the high standards we are seeking to maintain in the Real Estate industry. We strongly encourage legislators of the State of Alaska to vigorously support this bill. *Let us all work to make the home buying process better!*

Sincerely,

Jim Foss, President
Alaska ASHI

CC: Alaska ASHI members, ASHI board of Directors

Independent Brokers Association

6224 Staedem Drive
Anchorage, Alaska 99504
(907) 338-1918

April 16, 2007

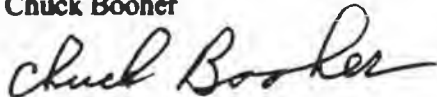
Alaska Association of Mortgage Brokers

The Independent Brokers Association is an informal group of real estate brokers, mortgage bankers and title insurance people who have been meeting weekly since the mid-1980's to keep up-to-date on what is happening in the real estate industry. We usually have between 30 and 40 people in attendance at each of our meetings.

On April 3, 2007 John Martin, with the Alaska Association of Mortgage Brokers, gave a presentation on HB 162 and SB102 regarding the licensing of mortgage companies and their employees involved in the mortgage lending process.

At the end of his presentation our Association voted to support this legislation. This legislation would hopefully eliminate some of the problems borrowers currently face in the mortgage lending industry. People involved in real estate sales, title insurance and home inspections are already licensed by the state. Therefore, it seems only logical that those involved in mortgage lending should also be licensed.

Chuck Booher



Co-Chairman,
Independent Brokers Association

ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

April 10, 2007

Ms. Terri Weary, President
Alaska Association of Mortgage Brokers
224 N. Yenlo, Suite 3b
Wasilla, Alaska 99654

Re: House Bill 162, "the Mortgage Licensing Bill"

Dear Ms. Weary:

Thank you for asking for input from the Alaska Land Title Association regarding this pending legislation. We believe the bill is necessary and well thought out.

After discussion with our committee and members, it is agreed that we will support House Bill 162 as it was introduced on February 28, 2007.

Sincerely,

ALASKA LAND TITLE ASSOCIATION


Rex Tomlinson
President

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ney, Page E-2

MONEY CLASSIFIED

ANCHORAGE DAILY NEWS • www.adn.com

SATURDAY, MARCH 21, 2008

3 plead guilty to Anchorage fraud

■ MORTGAGE CRIME:

Prosecutors say four others are part of the loan ring.

By RICHARD RICHTMYER
Anchorage Daily News

Three Anchorage residents have pleaded guilty to charges that they were part of a mortgage fraud ring.

Bekim Hasipi, Robin Dorman and Jan Marquiss pleaded guilty in federal court to one count each of wire fraud for making false statements in mortgage loan applications, U.S. Attorney Nelson P. Cohen said Friday.

The three are part of a group of seven Anchorage residents, federal

prosecutors have charged with deceiving mortgage lenders by overstating income and assets on loan applications.

The ring used the money to buy residential properties and then sell them at higher prices, federal charging documents say. Altogether, the group netted at least \$750,000 in profits from those sales, federal prosecutors assert.

The conspiracy started in 2002 and involved loan amounts ranging from \$156,000 to \$796,000, according to the government's charging documents.

Hasipi, Dorman and Marquiss each admitted before Chief U.S. District Judge John W. Sedwick this week

that they had acted as "nominee borrowers," or stand-ins for a co-conspirator, who was the true beneficiary of the transactions, Cohen said.

In December, federal prosecutors accused Kourosh Partow of being the ringleader, falsifying documents while he was a manager at the Anchorage branches of national mortgage companies Countrywide Home Loans and American Home Mortgage.

Neither of those mortgage companies has been accused of any wrongdoing.

Partow and three others — Azem Limani, Dzevid Limani and Agim De-
loli — were indicted in December on charges including conspiracy, bank

fraud, mail fraud and making false statements to financial institutions.

Sedwick postponed scheduling a sentencing date for the three who pleaded guilty this week pending the outcome of the charges against the remaining defendants, the U.S. attorney's office said Friday.

They each face up to 20 years in federal prison, a fine of up to \$250,000 or both. However, the judge has wide discretion and can base his or her sentences on the seriousness of their offenses as well as their criminal histories.

■ Daily News reporter Richard Richtmyer can be reached at richtmyer@adn.com or 257-4344.

SEAWOLVES' ENERGY BOOST

F

When Jennifer Salazar is on the floor, it's a shot of adrenaline for the undefeated UAA women's basketball team. Salazar is not the highest scorer or leading rebounder, but nobody brings more energy to the court

Sunday in Sports

A seventh linked to mortgage fraud ring

■ **INDICTED:** Prosecutors accused Kourosch Partow of falsifying loan documents.

By **RICHARD RICHTMYER**
Anchorage Daily News

Federal prosecutors have linked a seventh Anchorage resident to an alleged mortgage fraud ring.

A federal grand jury handed down an indictment this week against Kourosch Partow, accusing him of falsifying loan documents while he was a manager and loan officer at the Anchorage branches of two national mortgage companies: Countrywide Home Loans and American Home Mortgage.

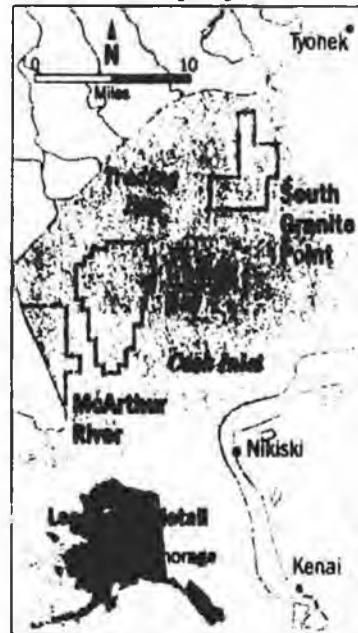
Prosecutors allege that Partow overstated the income and assets on the mortgage applications of six co-conspirators, who used the money to buy 14 residential properties and then sell them at higher prices.

Altogether, the alleged ring netted roughly \$750,000 in profits on the sale of those properties, according to a statement from the U.S. attorney's office in Anchorage Friday.

In September, federal authorities arrested the six alleged co-conspirators, charging all of the them with conspiracy and several with bank fraud, mail fraud and making false statements to financial institutions.

Those charged in September were Azem Limani, Bekim Hasipi, Robin Dorman, Dzevid Limani, Agim De-

Chevron plans Cook Inlet projects



FOR ENASTROM / Anchorage Daily News



See Page F-4, MORTGAGE

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shows the proposed Martha Washington gold coin, the first of the First Spouse series.

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MORTGAGE: Ring reportedly netted \$750,000

Continued from F-1

loli and Jan Marquiss. Each has pleaded not guilty to the charges, said Karen Loeffler, the assistant U.S. attorney prosecuting the case.

A judge has issued Partow a summons to appear in court to answer the charges, but he had not done so by Friday, Loeffler said.

Partow's attorney, Kevin Fitzgerald, did not return a phone call Friday.

Executives of Countrywide and American Home Mortgage also did not return phone calls Friday. Neither company has

been charged with wrongdoing.

Partow was one of several employees who left Countrywide in May after the company said an internal audit had turned up irregularities, without providing specifics.

In charging documents released Friday, federal prosecutors say the alleged conspiracy started in 2002 and involved loan amounts ranging from \$156,000 to \$796,000.

The loan applicants lied to the mortgage companies by providing false documentation such as income tax returns and by not disclosing that they had borrowed money

from other banks for down payments on the houses, according to the charges.

Azem Limani is accused of being the ringleader and faces 28 separate counts. The charges say the others whose names were on the loan applications were acting as nominees, or stand-ins, for Limani, who was the true beneficiary of the transactions.

Loeffler said she expects the case to go to trial in April.

■ Daily News reporter Richard Fischmyer can be reached at cfischmyer@adn.com or 257-4344.

PIPELINES: Oil faster after BP

Continued from F-1

markets. This month, Congress passed legislation to tighten regulation of low-pressure oil transmission pipelines — the type that leaked in Prudhoe.

Federal criminal investigators also are looking into the Prudhoe problems and have subpoenaed massive quantities of documents from BP.

Pipeline regulators gave BP two weeks to provide information including:

- Detailed plans and a schedule for starting and finishing the pipeline replacement.

- A list of the steel pipe, valves and other equipment needed for the job, plus an explanation for why any of the items haven't yet been ordered.

- Details of how BP is inspecting "jumper" pipelines for corrosion. These are short connectors BP installed to reroute oil that normally went through the transmission lines, some of which are now shut down.

BP runs Prudhoe on behalf of itself and other owner companies including Exxon Mobil and Conoco Phillips. Production in recent weeks has approached 450,000 barrels a day, about the same level the field was producing before the shutdown.

BP spokesman Daren Beaudoin said Friday the company has been working closely with federal regulators and will turn over the requested information.

The company plans to replace 16 miles of transmission pipelines, which are major trunk lines that drain crude oil out of Prudhoe and feed it into the 800-

bank start cons of "I com othe safe T orig the tion up t (that ly t mu oil was Slo low the Be be thr out per er and do

CHEVRON: 4th largest producer expands in Inlet

Continued from F-1

Zager said there are a lot of challenges, including those older platforms, many of which haven't had drilling operations on them for quite a few years.

"The current plan is to begin this drilling program in the second half of 2007," with a capital spend of about \$200 million planned over the next three years, a total of \$300-\$350 million in capital when partners' shares are included.

Chevron has a "significant" program coming up for Cook Inlet gas, Zager said, with "exploration plans at Granite Point."

Granite Point "has never really been drilled on top as a gas prospect," he said, and while it's in a good neighborhood for gas, Granite Point is risky for gas because

it's shallower than some of the other fields.

In addition, Chevron is "continuing to look at options on our south Kenai acreage" as well as in existing gas fields.

And the company is developing gas storage. "It's hard for me to overemphasize gas storage," he said. On cold days, gas is pulled out of storage and when temperatures go about 30 degrees, gas can probably be put back into storage.

Zager also addressed the contract Unocal, which Chevron has since acquired, signed in 2000 with Enstar Natural Gas Co., the company that distributes gas for heating to Southcentral homes and businesses. It was the first gas supply contract to bring higher Lower 48 gas prices to Cook Inlet, he said, and was negotiated at a time when En-

star was having problems getting its gas contracts extended.

What Enstar got from Unocal was a commitment to spend \$10 million in exploration money to find reserves.

Since then, Zager said, "Unocal and now Chevron has spent \$225 million on gas exploration and development ... roughly \$60 million on exploration, \$150 million on development of facilities and pipelines and about \$15 million on gas storage."

Zager said around 150 billion cubic feet of gas has been discovered and committed to Enstar under the contract — about a five-year supply. When the contract was signed, he said, "Enstar had a contractual shortage beginning in 2004," and that's been moved out to 2009.

WELCH: Surimi gets boost, drops 'imitation' tag

Continued from F-1

world's largest snow crab producer, delivering close to 195 million pounds this year into mostly U.S. markets. Canada's crab quotas are on a downward spiral, as are Russia's, where catches have dropped to a still hefty 110 million pounds.

Alaska accounts for 10 percent of world supply, with an estimated harvest of about 37 million pounds of snow crab in the com-

The 2006 Bering Sea snow crab catch of 40 million pounds was valued at \$31 million at the docks.

• Surimi by any other name. The Alaska pollock industry is celebrating a name change for surimi — the popular crab, lobster or shrimp-flavored seafood made from whitefish that is served in seafood salads and at sushi bars. The U.S. Food and Drug Administration is now allowing the word

• Seward and sportfishing. A study getting under way by the Alaska SeaLife Center will analyze the economic impact of sport-caught salmon to Seward's economy, and compare the benefits to the high costs of salmon enhancement and restoration programs.

The Seward study will focus primarily on the importance of coho and chinook salmon to the local sportfishery. "We believe it's fairly apparent that these fish bring a lot of val-

FBI investigates local home mortgage company

Thursday, October 19, 2006 - by Maria Downey

Anchorage, Alaska - FBI agents searched American Home Mortgage yesterday, and they say the case is connected to a major fraud bust last month.

Agents searched the Benson Boulevard branch, focusing on branch manager Kouros Partow. His employees said Partow didn't show up for work today and they have no idea what the investigation concerns.

Partow, also known for his dog mushing, formerly worked at Countrywide Home Loans Inc. while that business was under investigation. Court documents from a series of raids last month mention Countrywide as a victim of an alleged fraud ring.

FBI spokesman Eric Gonzalez says the probe into American Home Mortgage is connected to the last month's arrests of seven men, accused of using fraudulent financial documents to obtain loans to buy and then re-sell property.

No details are being released.

KTUU-TV called Partow's home several times but each time someone hung up.

*Channel 2 Broadcasting Inc.
<http://www.ktuu.com/>*

Friday, September 22, 2006

KTUU.COM

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Thursday, September 21, 2006 - by Maria Downey

 **Click print**

Anchorage, Alaska - A full force of federal agents and local police were busy from the Hillside to Eagle River today. Details are not yet being released, but what is known is that the busts involve two separate cases: one deals with a mortgage bank fraud and the other with a suspected organized drug ring.

The search warrants and arrests were made today involving the FBI, the Drug Enforcement Administration, the Internal Revenue Service, Alaska State Troopers and the Anchorage Police Department. All that the FBI will confirm is that in the suspected bank fraud case, there were search warrants served in at least five locations. The house at 11200 Briggs Ct. was searched for hours. According to Municipality of Anchorage records, the house belongs to Paul Brannon.

This morning agents descended on a house on East 45th Avenue. The house belongs to Bekim Dobrova. Sources say he is in custody in connection to the bank fraud case, but details are not being released.

In all, FBI spokesman Eric Gonzalez says seven people were arrested on outstanding warrants.

And in what the FBI calls an unrelated case, there was a series of drug busts today in what's believed to be an organized drug ring. The U.S. attorney's office says the indictments in are currently sealed.

But an indictment filed in federal court this week cites a five-member ring, with at least one of those arrests occurring today. The defendant cocaine ring are listed as Luis Serrano, Andrew Waters, Ajdin "Joe" Zaim Selimoski and Gzim "Jimmy" Veseli.

The U.S. attorney's office says more details in the cases will be released tomorrow.

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April 23, 2007

The Honorable Johnny Ellis, Chair
Senate Labor and Commerce Committee
Alaska State Capitol, Room 9
Juneau, Alaska 99801-1182

SB 102 (Huggins)—Support

Dear Chair Ellis:

On behalf of the AARP members in Alaska, we want to inform you and your colleagues on the Senate Labor and Commerce Committee that AARP is now in support of SB 102, authored by request by Senator Charlie Huggins and co-sponsored by Senator Bill Wielechowski.

AARP supports licensure and we appreciate that lenders as well as brokers are included in this bill. The concerns that our consumer attorney had about the bill have been addressed by Mark Davis, the Director of the Division of Banking and Securities. We understand that the Division plans to work with the Legislature in the future for even stronger consumer protection bills on similar topics. We look forward to supporting those efforts also.

We understand that the American Financial Services Association is seeking an exemption to the provisions of SB 102. We did want to alert you and Senator Huggins that AARP would strongly oppose an exemption based on our understanding that many past transgressions with regard to predatory lending practices have been attributable to members of that organization. We would expect that they would deny this but, if AFSA members do not engage in predatory lending practices, there is no reason for them to ask for an exemption from the provisions of this bill.

AARP has fought predatory lenders for years because so many older homeowners have been their victims. As you know, the media is putting a spotlight on such practices and elected leaders throughout the country are examining what is happening in their state.

SB 102 is a good bill that serves as part of an overall strategy to upgrade and enforce consumer protections in Alaska. We appreciate Senator Huggins bringing it forward on behalf of the Division,

AARP recommends an "AYE" vote on SB 102.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Senator Gary Stevens
Senator Bettye Davis
Senator J. yman Hoffman
Senator Con Bunde
Senator Charlie Huggins
Senator Bill Wielechowski
Mark Davis, Director, Division of Banking and Securities



April 23, 2007

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Senate Labor and Commerce Committee
Alaska State Capitol, Room 9
Juneau, Alaska 99801-1182

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Sincerely,



Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Senator Gary Stevens
Senator Betsy Davis
Senator Lyman Hoffman
Senator Con Bunde
Senator Charlie Huggins
Senator Bill Wielechowski
Mark Davis, Director, Division of Banking and Securities



1215 K Street, Suite 1900
Sacramento, CA 95814

April 26, 2007

Senate Labor & Commerce Committee
Alaska State Senate
State Capitol
Juneau, AK

Subject: OPPOSITION TO SB 102

Dear Committee Members and Staff:

On behalf of Countrywide Home Loans, Inc. ("Countrywide")¹, I would like to formally register our opposition to SB 102 regarding mortgage broker/loan originator licensing as drafted. Countrywide is a member of the American Financial Services Association (AFSA), a national trade association whose members are financial services companies that provide credit for consumer and small business including many mortgage lenders and the Mortgage Bankers Association. I've attached AFSA's prepared testimony in opposition to SB 102 as well as suggested amendment language as first proposed to Department Director Mark Davis.

Nothing in the amendment requested by AFSA would limit the supervisory and enforcement powers of the Department. As employees of a licensed company, these individuals would be subject to all provisions of the Act applicable to the corporate licensee. This bill grants broad authority to both the Department and the Attorney General to enforce the provisions of the Act against any "person" as well as any licensee. This broad authority would allow the Department to enforce these provisions of the act against AFSA member companies (licensees) and their employees and exclusive agents (persons). We believe the language in the legislation should be clear to avoid burdening the regulator with a potential flood of thousands of licensee applications for individuals who meet the broad definitions but do not actually originate loans in Alaska. Without this amendment, we cannot support SB 102.

SB 102 as drafted without the AFSA amendment would require large companies such as Countrywide to license over 2,500 individual loan originators because of the way "loan originator" is defined. For example, employees that work in a centralized operation outside of Alaska, such as a customer service call center who may service existing customers would need to be licensed in order to assist that customer in the event the customer seeks to refinance an existing loan or requests a new home equity line or second mortgage. It has been suggested that calls could be routed to a small amount of licensed employees in a call center; however, previous attempts to employ such a program has resulted in customers receiving less than optimal customer service.

¹ Countrywide is the primary subsidiary of Countrywide Financial Corporation ("CFC"), which provides mortgage banking and diversified financial services through its subsidiaries in domestic and international markets. Founded in 1969 and a member of the S&P 500 and Fortune 500, CFC is headquartered in Calabasas, California, and its family of companies has a workforce of more than 55,000 employees. Through its mortgage banking segment, CFC funded \$468 billion in mortgage loans in 2006, which it originates, purchases, securitizes, sells and services.