

**SENATE BILL NO. 102**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY SENATORS HUGGINS BY REQUEST, Wielechowski

Introduced: 3/2/07

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

1 **meaning given to "licensee" in AS 06.60.990;**

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

3 **Chapter 60. Mortgage Lending Regulation Act.**

4 **Article 1. Licensing.**

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

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

10 (1) a natural person who

11 (A) is licensed as an originator under this chapter; and

12 (B) works under contract for, or as an employee of, a mortgage

13 licensee; or

14 (2) a mortgage licensee, if an employee of the mortgage lender is

15 (A) a principal owner or a manager of the mortgage lender; and

16 (B) is licensed as an originator under this chapter.

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

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

20 **Sec. 06.60.015. Exemptions; requirements of registration.** (a) Subject to (b)  
21 of this section, this chapter does not apply to a person who operates as a mortgage  
22 lender or mortgage broker if the person is

23 (1) an individual who grants a mortgage loan for residential property  
24 owned by the individual;

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

31 (3) a subsidiary of or an affiliate of a person who is covered by (2) of

1 this subsection and who is subject to the general supervision, regulation, and  
 2 examination of a regulatory body or agency of the United States, a state or territory of  
 3 the United States, or the District of Columbia;

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

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

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

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

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

19 (b) A person who is listed in (a)(2) - (8) of this section shall file a registration  
 20 form to obtain an exemption under (a) of this section. The department shall determine  
 21 the form and content of the registration form.

22 **Sec. 06.60.020. Application for mortgage license.** An application for a  
 23 mortgage license must

24 (1) be in writing;

25 (2) be signed by the applicant and notarized;

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

27 (4) contain the name of the applicant;

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

31 (6) if the applicant is a corporation, contain the name and both the

1 residence and business addresses of each officer and director of the corporation and a  
2 shareholder holding 10 percent or more of the total shares;

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

6 (8) contain the mailing address of the applicant, the street address and  
7 city, if any, for each business location that will be covered by the license, and an  
8 identification of the applicant's principal office;

9 (9) provide the applicant's written consent to an investigation of the  
10 applicant under AS 06.60.030;

11 (10) contain other information that the department may require  
12 concerning the organization and operations of the applicant and the financial  
13 responsibility, background, experience, and activities of the applicant and its directors,  
14 officers, members, owners, and other principals.

15 **Sec. 06.60.025. Application for originator license.** An application for an  
16 originator license must

17 (1) be in writing;

18 (2) be signed by the applicant and notarized;

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

20 (4) contain the name and residence address of the applicant;

21 (5) include a complete set of fingerprints of the applicant; and

22 (6) contain other information or supporting material that the  
23 department may require concerning the applicant, including other forms of  
24 identification of the applicant.

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

28 **Sec. 06.60.035. Fees and expenses.** (a) When an applicant submits an  
29 application for a license under this chapter to the department, the applicant shall pay to  
30 the department

31 (1) a nonrefundable application fee of \$250 in partial payment of those

1 investigation expenses incurred by the department; and

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

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

7 **Sec. 06.60.040. Competency testing.** (a) A person who applies for an  
8 originator license shall pass a competency test conducted and graded by the  
9 department. In cooperation with the education committee established under  
10 AS 06.60.160(b), the department shall establish the scope and content of the test by  
11 regulation.

12 (b) An individual must score 75 or better to pass the competency test.

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

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

20 (b) The bond required by (a) of this section shall be for the use of the  
21 department, the Department of Law, or another person to recover for a claim for relief  
22 against the obligor under this chapter. The bond must state that the obligor will  
23 faithfully conform to and abide by the provisions of this chapter and all regulations  
24 adopted under this chapter and will pay the department, the Department of Law, or  
25 another person all money that may become due or owing to the department, the  
26 Department of Law, or the other person from the obligor under this chapter.

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

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

31 (e) If the department determines at any time that the bond required under (a)

1 of this section is unsatisfactory for any reason, the department may require the  
 2 mortgage licensee to file with the department, within 10 days after the receipt of a  
 3 written demand from the department, an additional bond that complies with the  
 4 provisions of this section.

5 **Sec. 06.60.050. Issuance of license.** Except as otherwise provided in this  
 6 chapter, the department shall issue a license to an applicant if

7 (1) the application complies with the requirements of this chapter that  
 8 apply to the particular license;

9 (2) the applicant

10 (A) has not been convicted, including a conviction based on a  
 11 guilty plea or a plea of nolo contendere, of a felony or another crime involving  
 12 fraud, misrepresentation, or dishonesty within the previous seven years;

13 (B) has not had a license for engaging in an occupation  
 14 suspended or revoked by this state, another state, or the federal government, or  
 15 within the previous seven years; in this subparagraph, "license" means a  
 16 license issued under this chapter or a similar license issued by another state;

17 (C) has not made a false statement of material fact on the  
 18 application;

19 (D) has not violated a provision of this chapter, a regulation  
 20 adopted under this chapter, or an order of the department under this chapter;  
 21 and

22 (3) the applicant pays all fees required to be paid by an applicant for  
 23 the particular license.

24 **Sec. 06.60.055. Decision on application.** (a) Within 30 days after the date a  
 25 complete application, the required bond if the application is for a mortgage license,  
 26 and any required fees and investigative costs are received by the department, the  
 27 department shall either grant or deny the license.

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

31 **Sec. 06.60.060. Determinations for mortgage licensing.** Before granting a

1 mortgage license, the department shall determine that

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

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

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

11 **Sec. 06.60.065. Additional grounds for denial of license.** In addition to any  
12 other grounds identified in this chapter for denying a license, the department may deny  
13 a mortgage license to an applicant if the applicant

14 (1) has liabilities that exceed the applicant's assets, cannot meet the  
15 applicant's obligations as they mature, or is in a financial condition that indicates that  
16 the applicant cannot continue in business and safely handle the mortgage loans of the  
17 applicant's customers;

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

21 (3) has been prohibited by a federal or state regulatory agency from  
22 engaging in, participating in, or controlling a finance-related activity that provides  
23 financial services to the public; or

24 (4) has, within the previous seven years,

25 (A) been convicted, including a conviction based on a guilty  
26 plea or a plea of nolo contendere, of a felony or another crime involving fraud,  
27 misrepresentation, or dishonesty;

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

30 (C) had the applicant's participation in the conduct of a  
31 business limited by an administrative act of a federal or state agency, including

1 the suspension or revocation of a license for engaging in an occupation; or

2 (D) had a license for engaging in an occupation suspended or  
3 revoked by this state, another state, or the federal government.

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

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

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

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

17 **Sec. 06.60.085. Renewal of license.** (a) Unless the department denies the  
18 renewal under (b) of this section, a licensee may renew a license by submitting to the  
19 department

20 (1) a renewal application in the form and manner established by the  
21 department;

22 (2) the biennial license fee required by AS 06.60.105;

23 (3) if the renewal is for a mortgage license, a report identifying any  
24 changes in the information provided under AS 06.60.020(4) - (8);

25 (4) if the renewal is for an originator license, certificates or other  
26 documents that show that the continuing education requirements of AS 06.60.160 have  
27 been satisfied; and

28 (5) if the renewal is for an originator license or for a mortgage licensee  
29 who is operating as an originator under AS 06.60.010(b)(2), the fund fee required by  
30 AS 06.60.550.

31 (b) A renewal under (a) of this section is considered granted unless, within 30

1 days after the department receives the renewal application, the department notifies the  
2 licensee that the department has denied the renewal application because the licensee is  
3 not complying with this chapter.

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

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

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

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

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

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

23 (g) While a license is inactive, the person holding the inactive license shall  
24 pay the biennial license fee as required by AS 06.60.105 and inform the department of  
25 any change that occurs in the name and address of the person, the location of the  
26 person's business, or in the business operations or control of the person, but the person  
27 is not required to maintain the bond required by AS 06.60.045 or to file the annual  
28 report required by AS 06.60.100.

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

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

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

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

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

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

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

21 **Sec. 06.60.095. Reactivation of inactive license.** (a) Except as provided in (b)  
22 and (c) of this section, a person who has an inactive license certificate under  
23 AS 06.60.090 may reactivate the license by applying to the department for an active  
24 license and paying the required fees.

25 (b) A person is eligible for reactivation of an inactive license if the person has  
26 been in an inactive status for less than 24 months from the anniversary date of the  
27 issuance of the initial inactive license. If the person has been in an inactive status for  
28 24 months or longer, the person may obtain a license only by satisfying the  
29 qualifications applicable to initial licensure.

30 (c) The department shall issue an active license that has been converted from  
31 inactive status under this section for the remainder of the current 24-month period of

1 the inactive license.

2 **Sec. 06.60.097. Surrender of license.** (a) A licensee may surrender a license  
3 issued to the licensee by delivering written notice to the department that the licensee  
4 intends to surrender the license, except that a mortgage licensee may not surrender a  
5 license until all loans of that mortgage licensee have either been paid in full or sold.

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

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

### 10 **Article 3. Licensee Obligations.**

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

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

20 **Sec. 06.60.105. Biennial license fee.** (a) A licensee shall pay the department a  
21 biennial license fee of \$500.

22 (b) After the payment of the initial biennial license fee under AS 06.60.035, a  
23 licensee shall pay the biennial license fee every two years on or before the anniversary  
24 date of the original issuance the license.

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

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

29 **Sec. 06.60.110. Location of business.** A mortgage licensee may not maintain  
30 the mortgage licensee's principal place of business or a branch office within an office,  
31 suite, room, or place of business in which any other business is solicited or engaged in,

1 or in association or conjunction with another business, unless the name, ownership,  
2 and business purpose of the other business is disclosed in the mortgage licensee's  
3 application for a mortgage license.

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

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

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

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

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

18 **Sec. 06.60.130. Change in business control or operations.** (a) The prior  
19 written approval of the department is required for the continued operation of a  
20 mortgage licensee's business when a change in control of the mortgage licensee is  
21 proposed. The department may require the information it considers necessary to  
22 determine whether a new application is required. The mortgage licensee requesting  
23 approval of the change in control shall pay all reasonable expenses incurred by the  
24 department to investigate and approve or deny the change in control.

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

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

1 (b) A mortgage licensee shall keep and use in the mortgage licensee's business  
2 the accounting records that are in accord with sound and accepted accounting  
3 practices.

4 (c) A mortgage licensee shall maintain a record, by electronic record or  
5 photocopying, for the account of each borrower and for each loan made to the  
6 borrower. This record must contain all documents, notes, electronic correspondence,  
7 and forms that are produced or prepared for the mortgage loan by the mortgage  
8 licensee, and the mortgage licensee shall retain each document, note, electronic  
9 correspondence, and form for 25 months.

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

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

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

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

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

9 (2) reimburse the department its reasonable costs, as provided in  
 10 AS 06.60.250(c), that are incurred by the department during an investigation or  
 11 examination conducted at the office or place of business.

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

18 (b) A mortgage licensee may not permit a disqualified person to obtain an  
 19 ownership interest of 10 percent or more in the mortgage licensee's business without  
 20 the prior written approval of the department.

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

25 (d) In this section,

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

27 (A) has been convicted, including conviction by a guilty plea or  
 28 a plea of nolo contendere, of an offense that is a felony within the previous  
 29 seven years;

30 (B) has been held liable within the previous seven years for an  
 31 action that involves dishonesty or fraud by a final judgment in a civil action or

1 by an administrative judgment by a public agency; or

2 (C) had a license for engaging in an occupation revoked or  
3 terminated for cause by an agency of this state, another state, or the federal  
4 government within the previous seven years;

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

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

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

12 **Sec. 06.60.160. Continuing education requirements.** (a) An originator  
13 licensee shall complete and submit to the department evidence of at least 24 hours of  
14 continuing education for each biennial license period. The originator licensee or  
15 mortgage licensee shall submit the evidence when the originator licensee or mortgage  
16 licensee submits a license renewal application. The 24 hours of continuing education  
17 must be in a training program approved by the education committee established under  
18 (b) of this section.

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

25 (c) The education committee established under (b) of this section shall publish  
26 on a regular basis a listing of classes, seminars, or other training programs that may be  
27 used to satisfy the continuing education requirements of this section.

28 **Article 4. Discipline and Investigation.**

29 **Sec. 06.60.200. Revocation and suspension of a license.** (a) The department  
30 may suspend or revoke a license if the department finds that

31 (1) the licensee has failed to

- 1 (A) make a payment required by this chapter;
- 2 (B) maintain a bond required under AS 06.60.045, if the  
3 licensee is a mortgage licensee;
- 4 (C) satisfy the continuing education requirements, if the  
5 licensee is an originator licensee;
- 6 (D) comply with an applicable provision of this title, with an  
7 applicable regulation adopted under this title, with a lawful demand, ruling,  
8 order, or requirement of the department, or with another statute or regulation  
9 applicable to the conduct of the licensee's business;
- 10 (2) the licensee has, with respect to a mortgage loan transaction,
- 11 (A) made a substantial misrepresentation;
- 12 (B) made a false promise likely to influence, persuade, or  
13 induce another person to take action;
- 14 (C) engaged in a serious course of misrepresentation or made a  
15 false promise through another licensee;
- 16 (D) engaged in conduct that is fraudulent or dishonest;
- 17 (E) procured, or helped another person to procure, a license by  
18 deceiving the department;
- 19 (F) engaged in conduct of which the department did not have  
20 knowledge when the department issued the license, if the conduct demonstrates  
21 that the licensee is not fit to engage in the activities for which the licensee was  
22 licensed;
- 23 (G) knowingly authorized, directed, planned, or aided in the  
24 publishing, distribution, or circulation of a materially false statement or a  
25 material misrepresentation concerning the licensee's business or concerning  
26 mortgage loans originated in the course of the licensee's business in this or  
27 another state; or
- 28 (3) a fact or condition exists that would have constituted grounds for  
29 denial of the initial issuance or the renewal of the license.
- 30 (b) In addition to the bases for revocation under (a) of this section, the  
31 department may revoke the license of a licensee who is convicted, including

1 conviction by a plea of not guilty or a plea of nolo contendere, of a felony or another  
2 crime involving fraud, misrepresentation, or dishonesty committed while licensed  
3 under this chapter. A person whose license is revoked under this subsection is not  
4 qualified to be issued another license until seven years have elapsed since the person  
5 completed the sentence imposed for the conviction, or, if a sentence was not imposed  
6 or was suspended, until seven years have elapsed from the conviction.

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

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

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

20 **Sec. 06.60.240. Reinstatement of revoked license.** The department may  
21 reinstate a revoked license if the licensee complies with this chapter or with a demand,  
22 ruling, or requirement made by the department under this chapter. Before  
23 reinstatement of a license, the licensee shall pay the biennial license fee required under  
24 AS 06.60.105.

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

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

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

5 (2) may conduct the examination without prior notice to the licensee;  
6 and

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

9 (c) A person shall reimburse the department reasonable costs incurred by the  
10 department to conduct an examination under this section. The reimbursement under  
11 this subsection may not exceed the rate of \$75 an hour for the examination, plus travel  
12 costs, including a per diem allowance that does not exceed the per diem allowance for  
13 employees of the state under AS 39.20.110.

14 **Sec. 06.60.260. Removal or suspension of originator licensee.** If the  
15 department finds that an originator licensee is dishonest, reckless, or incompetent  
16 when operating as an originator, or refuses to comply with the law, rules of the  
17 department, or written requirements or instructions of the department relating to the  
18 originator license, the department may remove or suspend the originator licensee from  
19 operating as an originator in the state or order a person licensed under this title to  
20 remove the originator licensee from operating as an originator for the person.

21 **Sec. 06.60.270. Removal by entity.** A person licensed under this title shall  
22 remove an originator licensee from operating as an originator for the person if the  
23 department directs the person to remove the originator licensee under AS 06.60.260.

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

28 **Sec. 06.60.300. Definition.** In AS 06.60.200 - 06.60.300, "originator licensee"  
29 includes a mortgage licensee who is operating as an originator under  
30 AS 06.60.010(b)(2).

31 **Article 5. Business Duties and Restrictions.**

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

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

10                   (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of  
 11 1974);

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

13                   (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

14                   (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit  
 15 Protection Act);

16                   (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

17                   (6) any other federal law or regulation.

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

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

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

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

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

31                   (5) pay, receive, or collect, in whole or in part, a commission, fee, or

1 other compensation for brokering a mortgage loan in violation of this chapter,  
2 including a mortgage loan brokered by an unlicensed person other than an exempt  
3 person;

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

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

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

13 (A) consider additional appropriate property information;

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

16 (C) correct errors in the appraisal report;

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

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

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

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

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

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

5 (b) A licensee may not represent to the public that the licensee holds a title or  
6 certification if the representation violates 15 U.S.C. 1125.

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

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

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

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

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

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

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

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

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

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

28 **Sec. 06.60.360. Escrow accounts.** (a) A mortgage licensee and a borrower  
29 may agree that the mortgage licensee will keep in an escrow account all money that  
30 the borrower is required to pay to defray future taxes or insurance premiums or for  
31 other lawful purposes. The escrow account must be segregated from the other accounts

1 of the mortgage licensee. The mortgage licensee may not commingle the borrower's  
2 money with the general funds of the mortgage licensee.

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

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

12 (d) Except as provided by (e) of this section, a mortgage licensee who accepts  
13 money belonging to a borrower in connection with a mortgage loan shall deposit all of  
14 the money into an escrow account maintained by the mortgage licensee in a bank or  
15 another recognized depository institution. The mortgage licensee may not commingle  
16 the borrower's money with the general funds of the mortgage licensee. The mortgage  
17 licensee shall maintain all money deposited in the escrow account by the borrower  
18 until the money is paid to the intended third party. In this subsection, "recognized  
19 depository institution" means a person who is organized as a financial institution under  
20 the laws of a state or the federal government.

21 (e) A mortgage licensee is not required to deposit and maintain a borrower's  
22 money in an escrow account under (d) of this section if the mortgage licensee obtains  
23 a bond or letter of credit payable to the state that covers the anticipated average  
24 amount that would otherwise be held in an escrow account at any one time under (d)  
25 of this section.

## 26 **Article 6. Enforcement.**

27 **Sec. 06.60.400. Cease and desist orders.** The department may issue, under  
28 AS 06.01.030, an order directing a person to cease and desist from engaging in an  
29 unsafe or unsound practice. The department shall determine the form and content of  
30 the order.

31 **Sec. 06.60.410. Censure, suspension, or bar.** (a) In addition to any other

1 remedy provided under this chapter, the department may, by order after appropriate  
 2 notice and opportunity for a hearing, censure a person, suspend the license of a person  
 3 for a period not to exceed 12 months, or bar a person from a position of employment,  
 4 management, or control of a licensee, if the department finds that

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

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

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

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

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

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

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

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

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

30 (c) If the department determines that a licensee or a person acting on the  
 31 behalf of the licensee is in violation of, or has violated, a provision of this chapter, the

1 department may refer the information to the attorney general and request that the  
 2 attorney general investigate the violation under AS 45.50.495. The attorney general  
 3 may enjoin a violation of this chapter and may seek restitution, rescission, and other  
 4 relief as allowed by law.

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

### 9 **Article 7. Originator Surety Fund.**

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

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

16 **Sec. 06.60.520. Use of fund.** The legislature may appropriate the money  
 17 collected in the fund under AS 06.60.510 to the department to implement  
 18 AS 06.60.500 - 06.60.760, including paying claims, holding hearings, and incurring  
 19 legal expenses and other expenses directly related to fund claims and the operations of  
 20 the fund or for any other public purpose. Nothing in AS 06.60.500 - 06.60.760 creates  
 21 a dedicated fund.

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

25 **Sec. 06.60.540. Approval required.** (a) The department must approve a fund  
 26 expenditure that is used to prepare, print, manufacture, sponsor, produce, or otherwise  
 27 provide an item or a service to a member of the public, to a licensee, to a potential  
 28 licensee, or to another person.

29 (b) In (a) of this section, "an item or a service" includes an information  
 30 pamphlet, an examination preparation packet, an educational course, the certification  
 31 of a continuing education course, and an instructor for a continuing education course.

1           **Sec. 06.60.550. Required fund fees.** (a) A person who applies for or renews  
2 an originator license or who operates as an originator under AS 06.60.010(b)(2) shall  
3 pay to the department, in addition to the fees required by AS 06.60.035, a fund fee not  
4 to exceed \$150.

5           (b) Every two years, if the department determines that the average balance in  
6 the fund during the previous two years was less than \$250,000 or more than \$500,000,  
7 the department shall, unless the department waives the adjustment, adjust the fund fee  
8 so that the average balance of the fund during the next two years is anticipated to be an  
9 amount that is not less than \$250,000 or more than \$500,000. In this subsection,  
10 "average balance" means the average balance in the fund after the department deducts  
11 anticipated expenditures for claims against the fund and for hearing and legal expenses  
12 directly related to fund operations and claims.

13           (c) At least once a month, the department shall pay the fees collected under  
14 this section into the general fund. These payments shall be credited to the fund.

15           (d) Notwithstanding (a) of this section, an originator licensee who obtains an  
16 initial originator license when the department has reduced the fund fee to nothing, or a  
17 mortgage licensee who begins operating as an originator under AS 06.60.010(b)(2)  
18 when the department has reduced the fund fee to nothing, shall nonetheless pay a fund  
19 fee of \$150 to the department each of the first two years of the originator license or,  
20 for a mortgage licensee, of operating as an originator.

21           **Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies  
22 available to the person, a person seeking reimbursement for a loss suffered in a  
23 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the  
24 conversion of trust funds by an originator licensee is eligible to be reimbursed under  
25 AS 06.60.500 - 06.60.760 for the loss from money appropriated for that purpose.

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

31           **Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim

1 shall be executed under penalty of unsworn falsification and must include

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

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

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

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

21 **Sec. 06.60.610. Election to use small claims court.** (a) Within seven days  
 22 after receiving a copy of a fund claim under AS 06.60.600, each originator licensee  
 23 against whom the claim is made may elect to defend the fund claim as a small claims  
 24 action in district court under District Court Rules of Civil Procedure if the claim does  
 25 not exceed the small claims jurisdictional limit.

26 (b) An originator licensee who elects under (a) of this section to defend a fund  
 27 claim in district court under the small claims rules may not revoke the election without  
 28 the consent of the person who filed the fund claim.

29 (c) On receipt of a valid written election under (a) of this section, the  
 30 department shall dismiss the fund claim filed with the department and notify the  
 31 person who filed the fund claim that the person who filed the fund claim must bring a

1 small claims action in the appropriate district court.

2 **Sec. 06.60.620. Filing fee.** (a) A person who files a fund claim under  
3 AS 06.60.570 shall pay the department a filing fee of \$250 when the person files the  
4 fund claim.

5 (b) The department shall refund the filing fee required by (a) of this section if  
6 the

7 (1) department makes an award to the claimant;

8 (2) fund claim is dismissed under AS 06.60.610; or

9 (3) fund claim is withdrawn by the claimant before the office of  
10 administrative hearings (AS 44.64.010) holds a hearing on the fund claim.

11 **Sec. 06.60.630. Department contracts.** When the department receives a fund  
12 claim, the department may contract under AS 36.30 (State Procurement Code) with an  
13 investigator, an accountant, an attorney, or another person necessary for the  
14 department to process the fund claim. A contract may cover more than one fund claim.

15 **Sec. 06.60.640. Defense of claim.** When the department receives a fund claim,  
16 the department shall allow each originator licensee against whom the claim is made an  
17 opportunity to file with the department, within seven days after receipt of notification  
18 of the fund claim under AS 06.60.600, a written statement in opposition to the fund  
19 claim and a request for a hearing.

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

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

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

30 **Sec. 06.60.680. Findings and payment.** (a) At the conclusion of the  
31 department's consideration of a claim made under AS 06.60.570, the department shall

1 issue a written report that provides the department's findings of fact and conclusions of  
2 law.

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

8 **Sec. 06.60.690. Fund operations.** The department may charge from money  
9 appropriated to the department for the purpose the hearing and legal expenses related  
10 to fund and fund claim operations and fund claims. The department shall deposit into  
11 the fund money that the department recovers for these expenses from the originator  
12 licensee under AS 06.60.745. The department may not consider amounts paid from the  
13 fund for hearing or legal expenses when determining the maximum reimbursement to  
14 be awarded under AS 06.60.710 or the maximum liability for fund claims under  
15 AS 06.60.710.

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

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

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

30 **Sec. 06.60.710. Maximum liability.** (a) Payment of a fund claim may not  
31 exceed \$15,000 for each claimant, except that the payment may not exceed a total of

1 \$15,000 for each mortgage loan transaction regardless of the number of persons  
2 injured or the number of pieces of residential property involved in the mortgage loan  
3 transaction.

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

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

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

19 **Sec. 06.60.730. False claims or documents.** A person who files with the  
20 department a notice, statement, or other document required under AS 06.60.500 -  
21 06.60.760 that contains a wilful material misstatement of fact is guilty of a class A  
22 misdemeanor.

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

28 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a  
29 portion of a fund claim against an originator licensee under AS 06.60.680 or  
30 06.60.700, the department may recover from the originator licensee, in addition to the  
31 payment of the fund claim, the expenses incurred by the department to process and

1 otherwise handle the fund claim.

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

5 **Sec. 06.60.760. Definition.** In AS 06.60.500 - 06.60.760, "originator licensee"  
 6 includes a mortgage licensee who is operating as an originator under  
 7 AS 06.60.010(b)(2).

#### 8 **Article 8. Program Administration Fee.**

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

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

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

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

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

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

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

#### 31 **Article 9. Duties and Powers of the Department.**

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

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

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

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

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

## 23                           **Article 10. Miscellaneous Provisions.**

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

27           **Sec. 06.60.895. Effect of revocation, suspension, or surrender of license.**  
 28 The revocation, suspension, or surrender of a license does not impair or otherwise  
 29 affect the rights or obligations of a preexisting lawful contract between the licensee  
 30 and a borrower.

31           **Sec. 06.60.900. Applicability of administrative procedures.** The provisions

1 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to  
 2 deny, revoke, or suspend a license under this chapter, to censure, suspend, or bar a  
 3 person under AS 06.60.410, to hold hearings, and to issue orders.

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

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

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

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

#### 16 **Article 11. General Provisions.**

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

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

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

22 (3) "broker" means to operate as a mortgage broker;

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

25 (5) "escrow account" means an account

26 (A) to which a borrower makes payments for obligations  
 27 related to the real property that is the subject of a mortgage loan of the  
 28 borrower;

29 (B) held by a person other than the borrower on a mortgage  
 30 loan; and

31 (C) from which the person holding the account disburses

1 money to pay obligations related to the real property that is the subject of a  
2 mortgage loan of the borrower.

3 (6) "fund" means the originator surety fund established by  
4 AS 06.60.500;

5 (7) "fund claim" means a claim authorized under AS 06.60.560;

6 (8) "fund fee" means the fee that is required to be paid by  
7 AS 06.60.550;

8 (9) "knowingly" has the meaning given in AS 11.81.900;

9 (10) "license" means a license issued under this chapter;

10 (11) "licensee" means a person who holds a license issued under this  
11 chapter;

12 (12) "mortgage broker" means a person who, for compensation or gain,  
13 or in the expectation of compensation or gain, directly or indirectly, by telephone, by  
14 electronic means, by mail, through the Internet, or in person, arranges with a variety of  
15 lending sources, who may be private lenders, institutional investors, or wholesale  
16 lenders, to provide financing for mortgage loans;

17 (13) "mortgage lender" means a person who consummates and funds a  
18 mortgage loan and who is named as the payee in the promissory note and as the  
19 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent  
20 purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a  
21 licensee under this chapter;

22 (14) "mortgage lender license" means a license issued under this  
23 chapter to operate as a mortgage lender;

24 (15) "mortgage lender licensee" means a person who holds a mortgage  
25 lender license;

26 (16) "mortgage license" means a mortgage lender license or a  
27 mortgage broker license;

28 (17) "mortgage licensee" means a mortgage lender licensee or a  
29 mortgage broker licensee;

30 (18) "mortgage loan"

31 (A) means a loan made to an individual if the proceeds are to

1 be used primarily for personal, family, or household purposes and if the loan is  
 2 secured by a mortgage or deed of trust on an interest in a residential owner-  
 3 occupied property for one to four family units located in the state and  
 4 regardless of where the loan is made;

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

6 (C) does not include loans

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

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

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

13 (iv) made primarily for a business, commercial, or  
 14 agricultural purpose of the borrower or for construction of residential  
 15 property;

16 (19) "operate" means do business, offer to provide, or provide;

17 (20) "originator" means a natural person who, for compensation or  
 18 gain, or in the expectation of compensation or gain, directly or indirectly, by  
 19 telephone, by electronic means, by mail, or in person

20 (A) accepts or offers to accept an application for a mortgage  
 21 loan from a potential borrower;

22 (B) solicits or offers to solicit a mortgage loan for a potential  
 23 borrower;

24 (C) negotiates the terms or conditions of a mortgage loan with  
 25 or for a borrower or potential borrower; or

26 (D) issues to borrowers, potential borrowers, or the  
 27 representatives of borrowers or potential borrowers, mortgage loan

28 (i) commitments;

29 (ii) interest rate agreements;

30 (iii) interest rate guarantees;

31 (iv) prequalification letters; or

1 (v) commitment letters to finance up to 90 percent of  
2 the value of real property;

3 (21) "originator license" means a license issued to a person to operate  
4 as an originator;

5 (22) "originator licensee" means a person who holds an originator  
6 license;

7 (23) "program administration fee" means the fee described under  
8 AS 06.60.800(a);

9 (24) "records" includes books, accounts, papers, files, and other  
10 records;

11 (25) "residential property" means improved real property used or  
12 occupied, or intended to be used or occupied, for residential purposes.

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

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

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

18 \* **Sec. 4.** AS 44.64.030(a)(5) is amended to read:

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

21 \* **Sec. 5.** AS 45.50.481 is amended by adding a new subsection to read:

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

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

26 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND  
27 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a  
28 person who is engaging in activities for which a license is required under AS 06.60, enacted  
29 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to  
30 comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section,  
31 "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

1     \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

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

7     \* **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

8     \* **Sec. 9.** Except as provided in sec. 8 of this Act, this Act takes effect July 1, 2008.