

CS FOR SENATE BILL NO. 102(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/27/07

Referred: Finance

Sponsor(s): SENATORS HUGGINS BY REQUEST, Wielechowski

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; making certain
5 violations unfair trade practices; relating to persons who are licensed under the Alaska
6 Small Loans Act; and providing for an effective date."

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

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

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

1 licensee under AS 06.60; in this paragraph, "licensee under AS 06.60" has the
 2 meaning given to "licensee" in AS 06.60.990;

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

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

5 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

30 (2) a subsidiary or an operating subsidiary of a person who is identified
 31 by (1) of this subsection, or of a bank holding company or savings and loan holding

1 company, if the subsidiary or operating subsidiary certifies to the department on a
 2 form provided by the department that the subsidiary or operating subsidiary is exempt
 3 from this chapter because of applicable federal statute or regulation;

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

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

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

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

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

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

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

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

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

27 **Sec. 06.60.020. Application for mortgage license.** An application for a
 28 mortgage license must

29 (1) be in writing;

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 06.60.025. Application for originator license.** An application for an
28 originator license must

29 (1) be in writing;

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

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

1 (4) contain the name and residence address of the applicant;
 2 (5) include a complete set of fingerprints of the applicant; and
 3 (6) contain other information or supporting material that the
 4 department may require concerning the applicant, including other forms of
 5 identification of the applicant.

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

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

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

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

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

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

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

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

31 **Sec. 06.60.045. Bonding.** (a) An applicant for a mortgage license shall file

1 with the application submitted to the department under AS 06.60.020 a bond with one
2 or more sureties in the amount of \$25,000 under which the applicant is the obligor.
3 The bond must be satisfactory to the department.

4 (b) The bond required by (a) of this section shall be for the use of the
5 department, the Department of Law, or another person to recover for a claim for relief
6 against the obligor under this chapter. The bond must state that the obligor will
7 faithfully conform to and abide by the provisions of this chapter and all regulations
8 adopted under this chapter and will pay the department, the Department of Law, or
9 another person all money that may become due or owing to the department, the
10 Department of Law, or the other person from the obligor under this chapter.

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

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

15 (e) If the department determines at any time that the bond required under (a)
16 of this section is unsatisfactory for any reason, the department may require the
17 mortgage licensee to file with the department, within 10 days after the receipt of a
18 written demand from the department, an additional bond that complies with the
19 provisions of this section.

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

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

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

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

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

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

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

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

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

14 (3) not, within the previous seven years,

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

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

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

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

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

27 **Sec. 06.60.070. Form and contents of license.** A license must be in a form
 28 established by the department and must state the full name of the licensee. A mortgage
 29 license must state the address for each office of the business where the business of the
 30 licensee is to be conducted. If a mortgage licensee conducts business on the Internet,
 31 the mortgage license must also state the registered domain address through which the

1 mortgage licensee conducts the mortgage licensee's business and the physical location
2 of the mortgage licensee's main business office.

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

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

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

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

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

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

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

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

20 (5) if the renewal is for an originator license, the fund fee required by
21 AS 06.60.550.

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

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

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

31 (c) To make a license inactive, a licensee shall provide the department with a

1 written request that the license be made inactive and return the license certificate to
2 the department. The request must include the licensee's name, address, and other
3 information that the department requires that is necessary for the department to
4 process the request and a statement by the licensee that all mortgage loans of the
5 licensee have been paid in full or sold.

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

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

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

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

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

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

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

30 (k) While a license is inactive under this section, the department may take
31 action against the license, the person holding the inactive license, or both for

1 noncompliance with this chapter before the license became inactive or for
2 noncompliance with this section while the license is inactive.

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

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

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

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

17 (b) A person is eligible for reactivation of an inactive license if the person has
18 been in an inactive status for less than 24 months from the anniversary date of the
19 issuance of the initial inactive license. If the person has been in an inactive status for
20 24 months or longer, the person may obtain a license only by satisfying the
21 qualifications applicable to initial licensure.

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

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

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

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

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

2 **Article 3. Licensee Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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 business operations.** (a) The
19 prior 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 generally accepted accounting
3 principles.

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

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

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

1 first.

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

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

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

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

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

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

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

26 (d) In this section,

27 (1) "disqualified person" means a person who is not a licensee;

28 (2) "ownership interest" means an ownership interest of

29 (A) 10 percent or more, if the mortgage licensee is a
30 corporation with fewer than 75 shareholders;

31 (B) 51 percent or more, if the mortgage licensee is a

1 corporation with 75 or more shareholders or a limited liability company.

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

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

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

11 **Sec. 06.60.159. Mortgage licensee employment of, contract with, and**
12 **liability for originator.** (a) A mortgage licensee may not employ, or enter into a
13 contract with a person who acts as an originator for the mortgage licensee unless the
14 person has an originator license.

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

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

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

31 (c) The department may consider the recommendations of the education

1 committee when determining which training program to approve for the continuing
2 education requirements.

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

6 **Article 4. Discipline and Investigation.**

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

12 (1) the licensee has failed to

13 (A) make a payment required by this chapter;

14 (B) maintain a bond required under AS 06.60.045, if the
15 licensee is a mortgage licensee;

16 (C) satisfy the continuing education requirements, if the
17 licensee is an originator licensee;

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

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

23 (A) made a material misrepresentation;

24 (B) made a false promise likely to influence, persuade, or
25 induce another person to take action;

26 (C) engaged in a serious course of misrepresentation or made a
27 false promise through another licensee;

28 (D) engaged in conduct that is fraudulent or dishonest;

29 (E) procured, or helped another person to procure, a license by
30 deceiving the department;

31 (F) engaged in conduct of which the department did not have

1 knowledge when the department issued the license, if the conduct demonstrates
 2 that the licensee is not fit to engage in the activities for which the licensee was
 3 licensed;

4 (G) authorized, directed, planned, or aided in the publishing,
 5 distribution, or circulation of a materially false statement or a material
 6 misrepresentation concerning the licensee's business or concerning mortgage
 7 loans originated in the course of the licensee's business in this or another state;
 8 or

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

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

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

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

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

31 **Sec. 06.60.230. Divestment.** If the department has revoked a mortgage license,

1 the mortgage licensee shall divest itself of all outstanding loans that were issued under
 2 this chapter by selling or assigning them to another mortgage licensee, except that the
 3 divestment must be approved by the department.

4 **Sec. 06.60.240. Reinstatement of revoked license.** The department may
 5 reinstate a revoked license if the licensee complies with this chapter or with a demand,
 6 ruling, or requirement made by the department under this chapter. Before
 7 reinstatement of a license, the licensee shall pay any fees, restitution, and civil
 8 penalties owing under this chapter.

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

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

19 (1) shall have free access to the place of business, books, accounts,
 20 safes, and vaults of the licensee to examine and make copies as necessary;

21 (2) may conduct the examination without prior notice to the licensee;
 22 and

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

25 (c) For the purpose of hearings, investigations, or other proceedings under this
 26 chapter and except as otherwise provided in this chapter, the department or an officer
 27 designated by the department may administer oaths and affirmations, subpoena
 28 witnesses, compel the attendance of witnesses, take evidence, and require the
 29 production of books, papers, correspondence, memoranda, agreements, or other
 30 documents or records that the department considers relevant or material to the inquiry.

31 (d) If a person refuses to comply with a subpoena, the superior court, on

1 application by the department, may issue to the person an order requiring the person to
 2 appear before the department to produce documentary evidence or to give evidence
 3 touching the matter under investigation or in question. Failure to obey the order of the
 4 court may be punished by the court as a contempt order.

5 (e) The department may share information received or collected during an
 6 examination, investigation, or other proceeding with other law enforcement agencies.

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

12 **Sec. 06.60.260. Revocation, removal, or suspension of originator licensee.**

13 If the department finds that an originator licensee is dishonest, reckless, or
 14 incompetent when operating as an originator, or fails to comply with applicable law,
 15 with regulations or orders of the department, or with written requirements or
 16 instructions of the department relating to the originator license, the department may
 17 revoke or suspend the originator licensee, remove the originator licensee from
 18 operating as an originator in the state, or order a person licensed under this title to
 19 remove the originator licensee from operating as an originator for the person.

20 **Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove an
 21 originator licensee from operating as an originator for the mortgage licensee if the
 22 department directs the mortgage licensee to remove the originator licensee under
 23 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 censured, barred, or had their licenses
 26 suspended or revoked under this chapter. The department shall publish the list on a
 27 monthly basis.

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

29 **Sec. 06.60.320. False, misleading, or deceptive advertising prohibited.** A
 30 person may not advertise, print, display, publish, distribute, broadcast, or cause or
 31 permit to be advertised, printed, displayed, published, distributed, or broadcast, in any

1 manner a statement or representation with regard to the rates, terms, or conditions for
 2 a mortgage loan that is false, misleading, or deceptive.

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

7 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
 8 1974);

9 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

10 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

11 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
 12 Protection Act);

13 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

14 (6) any other federal law or regulation.

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

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

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

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

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

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

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

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

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

10 (A) consider additional appropriate property information;

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

13 (C) correct errors in the appraisal report;

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

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

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

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

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

31 (B) new or changed information from the borrower makes it

1 necessary to change the loan program offered to the borrower;

2 (11) represent that the person has a license, title, certification,
3 sponsorship, approval, status, affiliation or connection that the person does not have;

4 (12) engage in unfair, deceptive, or fraudulent mortgage loan practices
5 or advertising established by the department in regulation.

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

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

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

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

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

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

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

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

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

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

27 **Sec. 06.60.360. Escrow accounts.** (a) A covered person and a borrower may
28 agree that the covered person will keep in an escrow account all money that the
29 borrower is required to pay to defray future taxes or insurance premiums or for other
30 lawful purposes. The escrow account must be segregated from the other accounts of
31 the covered person. The covered person may not commingle the borrower's money

1 with the general funds of the covered person. Money deposited in an escrow account
2 under this subsection shall be maintained in the account until it is disbursed in
3 accordance with a written escrow agreement.

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

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

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

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

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

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

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

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

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

6 **Sec. 06.60.380. Definition of "covered person."** In AS 06.60.320 -
7 06.60.380, "covered person" means a mortgage licensee or a person who is licensed
8 under AS 06.20.

9 **Article 6. Enforcement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Article 7. Originator Surety Fund.**

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

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

29 **Sec. 06.60.520. Use of fund.** The legislature may appropriate the money
 30 collected in the fund under AS 06.60.510 to the department to implement
 31 AS 06.60.500 - 06.60.750, including paying claims, holding hearings, and incurring

1 legal expenses and other expenses directly related to fund claims and the operations of
2 the fund or for any other public purpose. Nothing in AS 06.60.500 - 06.60.750 creates
3 a dedicated fund.

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

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

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

14 **Sec. 06.60.550. Required fund fees.** (a) A person who applies for or renews
15 an originator license shall pay to the department, in addition to the fees required by
16 AS 06.60.035, a fund fee not to exceed \$150.

17 (b) Every two years, if the department determines that the average balance in
18 the fund during the previous two years was less than \$250,000 or more than \$500,000,
19 the department shall, unless the department waives the adjustment, adjust the fund fee
20 so that the average balance of the fund during the next two years is anticipated to be an
21 amount that is not less than \$250,000 or more than \$500,000. In this subsection,
22 "average balance" means the average balance in the fund after the department deducts
23 anticipated expenditures for claims against the fund and for hearing and legal expenses
24 directly related to fund operations and claims.

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

27 (d) Notwithstanding (a) of this section, an originator licensee who obtains an
28 initial originator license when the department has reduced the fund fee to nothing shall
29 nonetheless pay a fund fee of \$150 to the department each of the first two years of the
30 originator license or, for a mortgage licensee, of operating as an originator.

31 **Sec. 06.60.560. Claim for reimbursement.** In addition to any other remedies

1 available to the person, a person may seek reimbursement for a loss suffered in a
2 mortgage loan transaction as a result of fraud, misrepresentation, deceit, or the
3 wrongful conversion of money by an originator licensee and is eligible to be
4 reimbursed under AS 06.60.500 - 06.60.750 for the loss from money appropriated for
5 that purpose.

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

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

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

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

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

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

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

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

9 (c) On receipt of a valid written election under (a) of this section, the
10 department shall dismiss the fund claim filed with the department and notify the
11 person who filed the fund claim that the person who filed the fund claim must bring a
12 small claims action in the appropriate district court.

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

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

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

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

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

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

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

31 **Sec. 06.60.650. Standards of proof.** A person who submits a fund claim under

1 AS 06.60.570 bears the burden of establishing by a preponderance of the evidence that
2 the person who filed the fund claim suffered a loss in a mortgage loan transaction as a
3 result of fraud, misrepresentation, deceit, or the conversion of trust funds by an
4 originator licensee and the extent of those losses.

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

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

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

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

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

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

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

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

9 **Sec. 06.60.710. Maximum liability.** (a) Payment of a fund claim may not
10 exceed \$15,000 for each claimant, except that the payment may not exceed a total of
11 \$15,000 for each mortgage loan transaction regardless of the number of persons
12 injured or the number of pieces of residential property involved in the mortgage loan
13 transaction.

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

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

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

29 **Sec. 06.60.730. False claims or documents.** A person who files with the
30 department a notice, statement, or other document required under AS 06.60.500 -
31 06.60.750 that contains a wilful material misstatement of fact is guilty of a class A

1 misdemeanor.

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

7 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
8 portion of a fund claim against an originator licensee under AS 06.60.680 or
9 06.60.700, the department may recover from the originator licensee, in addition to the
10 payment of the fund claim, the expenses incurred by the department to process and
11 otherwise handle the fund claim.

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

15 **Article 8. Program Administration Fee.**

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

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

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

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

31 **Sec. 06.60.810. Payment and use of fees.** (a) The department shall coordinate

1 with the Department of Natural Resources to collect the program authorization fee.

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

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

7 **Article 9. Duties and Powers of the Department.**

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

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

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

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

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

30 **Article 10. Miscellaneous Provisions.**

31 **Sec. 06.60.890. Application to Internet activities.** This chapter applies to a

1 person even if the person is engaging in the activities regulated by this chapter by
2 using an Internet website from within or outside the state.

3 **Sec. 06.60.895. Effect of revocation, suspension, or surrender of license.**

4 The revocation, suspension, or surrender of a license does not impair or otherwise
5 affect the rights or obligations of a preexisting lawful contract between the licensee
6 and a borrower.

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

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

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

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

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

25 **Article 11. General Provisions.**

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

- 28 (1) "agent" does not include a person who is a state employee when
29 acting in the capacity of a state employee;
- 30 (2) "borrower" means an individual who receives a mortgage loan;
- 31 (3) "broker" means to operate as a mortgage broker;

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

3 (5) "escrow account" means an account

4 (A) to which a borrower makes payments for obligations
5 related to the real property that is the subject of a mortgage loan of the
6 borrower;

7 (B) held by a third person; and

8 (C) from which the third person identified in (B) of this
9 paragraph disburses money in accordance with a written agreement to pay
10 obligations related to the real property that is the subject of a mortgage loan of
11 the borrower.

12 (6) "fund" means the originator surety fund established by
13 AS 06.60.500;

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

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

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

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

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

21 (12) "mortgage broker" means a person who, for compensation or gain,
22 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
23 electronic means, by mail, through the Internet, in person, or by the person itself or an
24 originator who is an employee or under exclusive contract to the person,

25 (A) arranges with a variety of lending sources, who may be
26 private lenders, institutional investors, or wholesale lenders, to provide
27 financing for mortgage loans; or

28 (B) assists or offers to assist a borrower or potential borrower
29 to obtain financing for mortgage loans;

30 (13) "mortgage lender" means a person who consummates and funds a
31 mortgage loan and who is named as the payee in the promissory note and as the

1 beneficiary of the deed of trust; "mortgage lender" does not include a subsequent
 2 purchaser of a mortgage loan or an interest in a mortgage loan that is originated by a
 3 licensee under this chapter;

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

6 (15) "mortgage lender licensee" means a person who holds a mortgage
 7 lender license;

8 (16) "mortgage license" means a mortgage lender license or a
 9 mortgage broker license;

10 (17) "mortgage licensee" means a mortgage lender licensee or a
 11 mortgage broker licensee;

12 (18) "mortgage loan"

13 (A) means a loan made to an individual if the proceeds are to
 14 be used primarily for personal, family, or household purposes and if the loan is
 15 secured by a mortgage or deed of trust on an interest in a residential owner-
 16 occupied property for one to four family units located in the state and
 17 regardless of where the loan is made;

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

19 (C) does not include loans

20 (i) or extensions of credit to buyers of real property for
 21 a part of the purchase price of the property by persons selling the
 22 property owned by them;

23 (ii) to persons related to the lender by blood or
 24 marriage;

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

26 (iv) made primarily for a business, commercial, or
 27 agricultural purpose of the borrower or for construction of residential
 28 property;

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

30 (20) "originator"

31 (A) means a natural person who, for compensation or gain, or

1 in the expectation of compensation or gain, directly or indirectly, by telephone,
2 by electronic means, by mail, or in person

3 (i) interviews the consumer in connection with the
4 consumer's application for a mortgage loan;

5 (ii) accepts or offers to accept an application for a
6 mortgage loan from a potential borrower;

7 (iii) solicits or offers to solicit a mortgage loan for a
8 potential borrower;

9 (iv) negotiates or offers to negotiate the terms or
10 conditions the terms or conditions of a mortgage loan with or for a
11 borrower or potential borrower; or

12 (v) issues or offers to issue to borrowers, potential
13 borrowers, or the representatives of borrowers or potential borrowers,
14 mortgage loan commitments, interest rate agreements, interest rate
15 guarantees, prequalification letters, or commitments to finance up to a
16 stated amount of the value of real property, or 90-percent letters to
17 finance up to a stated amount of the value of real property;

18 (B) does not include employees of a mortgage licensee, or
19 employees of a person who is exempt from licensure under AS 06.60.015, who
20 perform clerical duties in connection with mortgage loan transactions, collect
21 financial information and other related documents that are part of the
22 application process, order verifications of employment, verifications of
23 deposits, requests for mortgage payoffs, and other loan verifications,
24 appraisals, inspections, or engineering reports, or perform the functions of a
25 mortgage loan processor, at the direction of and subject to the supervision of
26 the mortgage licensee, a mortgage originator, or the person exempt from
27 licensure.

28 (21) "originator license" means a license issued to a person to operate
29 as an originator;

30 (22) "originator licensee" means a person who holds an originator
31 license;

1 (23) "program administration fee" means the fee described under
2 AS 06.60.800(a);

3 (24) "records" includes books, accounts, papers, files, and other
4 records;

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

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

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

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

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

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

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

16 (A) child support;

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

20 (C) state or local taxes;

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

23 (A) the purchase price of the property or a loan made for the
24 express purpose of enabling an individual to purchase the property and used
25 for that purpose;

26 (B) labor or materials furnished to make, repair, improve,
27 preserve, store, or transport the property; and

28 (C) a special assessment imposed to defray costs of a public
29 improvement benefiting the property; and

30 (3) a creditor may make a levy against exempt property of any kind to
31 enforce the claim of a victim, including a judgment of restitution on behalf of a victim

1 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
 2 results in a conviction of a crime or an adjudication of delinquency, except that the
 3 debtor is entitled to an exemption in property

4 (A) not to exceed an aggregate value of \$3,000 chosen by the
 5 debtor from the following categories of property:

6 (i) household goods and wearing apparel reasonably
 7 necessary for one household;

8 (ii) books and musical instruments, if reasonably held
 9 for the personal use of the debtor or a dependent of the debtor; and

10 (iii) family portraits and heirlooms of particular
 11 sentimental value to the debtor; and

12 (B) not to exceed an aggregate value of \$2,800 of the debtor's
 13 implements, professional books, and tools of the trade.

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

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

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

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

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

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

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

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

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

28 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND
 29 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a
 30 person who is engaging in activities for which a license is required under AS 06.60, enacted
 31 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to

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.