

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3203

85

HB

162

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
 MAY 12 2007
 SENATE FINANCE COMMITTEE

DATE: 5/7/07

FURTHER:

 DATE TURNED
 IN TO OFFICE: 12 May 2007

Finance Committee considered CS FOR HOUSE BILL NO. 162(L&C)

HB 162 MORTGAGE LENDING

"An Act relating to mortgage lenders, mortgage brokers, mortgage originators, state agents who collect program administration fees, and other persons who engage in activities relating to mortgage lending; relating to mortgage loan activities; relating to an originator fund; relating to fees for mortgage loan transactions; making certain violations unfair trade practices; relating to persons who are licensed under the Alaska Small Loans Act; and providing for an effective date."

and recommends:

- be replaced with SCS or CS CS HB 162 (FIN)
 adopt previous SCS or CS CS forthcoming
 attached amendment(s)
 adopt _____ Letter of Intent
 further referral to _____ Committee

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

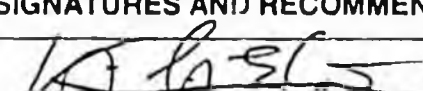



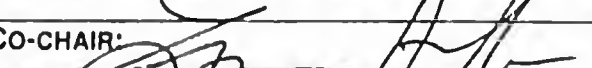

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	3/15/07			✓	#1
Admin.	4/16/07	✓			#2
Commerce	4/16/07	377.5			#3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton	✓			
	Thomas	✓			
	Huggins	✓			
	Olson			✓	
CO-CHAIR: 	Hoffman			✓	
CO-CHAIR: 	Stedman	✓			

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB162CS(L&C)-COM-BS-05-09-07
 Bill Version: CSHB 162(L&C)
 () Publish Date: _____

Revision Date/Time (Note if correction): 5/9/2007 Dept. Affected: Commerce
 Title: Mortgage Lending RDU: Banking & Securities (536)
 Component: Banking & Securities
 Sponsor: Lynn
 Requester: Senate Finance Component No.: 2808

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	150.5	333.5	333.5	333.5	333.5
Travel	0.0	25.0	50.0	50.0	50.0	50.0
Contractual	0.0	94.0	92.0	92.0	92.0	92.0
Supplies	0.0	6.0	8.0	8.0	8.0	8.0
Equipment	0.0	10.0	10.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	285.5	493.5	483.5	483.5	483.5

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

CHANGE IN REVENUES (1156)	0.0	782.5	430.0	730.0	455.0	530.0
-----------------------------	-----	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	0.0	285.5	488.5	483.5	483.5	483.5
TOTAL	0.0	285.5	488.5	483.5	483.5	483.5

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	0	2	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would require the licensing and regulation of people and companies originating, lending or brokering mortgage loans. Effective immediately upon passage, the department would be authorized to develop and adopt regulations necessary to implement changes made by this legislation. These regulations would not take effect before 1 July 2008. The division anticipates no new resources would be needed to accomplish this.

Beginning in FY09, the division estimates needing two additional staff (1 Business Registration Officer and 1 Financial Institution Examiner) to begin implementing the licensing program and collecting fees on an estimated 22,000 mortgage documents filed each year in Alaska.

Prepared by: Mark Davis, Director Phone: 907.269.8144
 Division: Banking and Securities Date/Time: 5/9/07 8:20 PM
 Approved by: Emil Notti, Commissioner Date: 5/9/2007
 Agency: Commerce, Community, and Economic Development

ANALYSIS CONTINUATION

Beginning in FY 10, two additional Financial Institution Examiners would be added to implement the provision that licensees may begin to be examined every three years.

Travel funds will cover the cost of examining both in-state and out-of-state licensees. Contractual expenses include funds for the Department of Law to draft legal documents, represent the division at administrative hearings resulting from licensing revocations/disciplinary actions, and enforce orders resulting from investigations; and for staff training.

Revenue:

Beginning in FY09 new businesses, and new and existing originators would be required to have a biennial license that would cost \$500.00. Existing mortgage brokers or mortgage lender businesses would not be required to be licensed until March 1, 2009. A one-time nonrefundable application fee would be collected from each new licensee in partial payment of investigation expenses incurred by the department.

The division estimates collecting a total of \$782.5 in receipt supported services in FY09. This is the result of five sources of revenue. First, the division estimates collecting \$187.5 in nonrefundable application fees from 100 new brokers, 500 originators and 150 existing brokers/businesses. Second, the division estimates collecting \$50.0 for licensing 100 new brokers. Third, the division estimates collecting \$75.0 from 150 existing brokers. Fourth, the division estimates collecting \$250.0 from 500 newly licensed originators. Fourth, the division estimates collecting \$220.0 in mortgage document fees of \$10 per document. The estimated number of documents is based upon a review of the number of recorded real estate documents.

In FY2010, the division anticipates generating a total of \$480.0. In addition to collecting nonrefundable application fees and biennial license fees for 200 new brokers and new originator, and \$220.0 in mortgage document fees, the division would begin collecting \$60.0 as a result of conducting 100 examinations at the average cost of \$600.00 per examination.

In FY2011, the division anticipates generating a total of \$730.0 in nonrefundable fees, licensing fees, mortgage document fees and examinations.

In FY2012, the division anticipates generating a total of \$455.0 in nonrefundable fees, licensing fees, mortgage document fees and examinations.

In FY2013, the division anticipates generating a total of \$530.0 in nonrefundable fees, licensing fees, mortgage document fees and examinations.

The division has no way of estimating the number of individuals who would fail the competency test and may be charged an additional \$150 fee for each test provided to the person.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 162(L&C)
(H) Publish Date: 4/20/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: An Act relating to mortgage lending RDU: Civil
Component: Commercial & Fair Business
Sponsor: REPRESENTATIVE(s) LYNN
Requester: House Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill would establish new statute to further regulate mortgage lending. Under the bill people who act as mortgage brokers, lenders and originators will be required to obtain a license issued through the Department of Commerce, Community and Economic Development ("DCCED"). The bill also imposes certain conduct requirements on the licensees, includes a prohibited practices section, and authorizes DCCED to impose disciplinary sanctions on licensees for violations of the requirements of the new law. Enactment of the bill will not fiscally impact the Department of Law.

Prepared by: Robert Meiners, Acting Director
Division: Administrative Services Division
Approved by: Robert Meiners for Talis Colberg, Attorney General
Agency: Department of Law

Phone: 465-5427
Date/Time: 3/15/07 4:12 PM
Date: 3/15/2007

FISCAL NOTE

REPORTED OUT
 MAY 12 2007
 SENATE FINANCE COMMITTEE

STATE OF ALASKA
 2007 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 162(L&C)
 (H) Publish Date: 4/20/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to mortgage lenders RDU Centralized Administrative Services
 Component Office of Administrative Hearings
 Sponsor Representative Lynn
 Requester House Labor & Commerce Component No. 2771

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	35.0	35.0	35.0	35.0	35.0
Travel	0.0	2.0	2.0	2.0	2.0	2.0
Contractual	0.0	4.0	4.0	4.0	4.0	4.0
Supplies	0.0	1.0	1.0	1.0	1.0	1.0
Equipment	0.0	2.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	44.0	42.0	42.0	42.0	42.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANCE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Interagency receipts)	0.0	44.0	42.0	42.0	42.0	42.0
TOTAL	0.0	44.0	42.0	42.0	42.0	42.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time	0	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides for licensing of persons who would be entitled to a hearing if licensure is denied or if disciplinary action is taken against them. Under AS 44.64.030(a)(5), the Office of Administrative Hearings (OAH) would conduct the hearings in these matters for the Department of Commerce, Community and Economic Development (DCCED). This bill also provides for OAH to hear originator surety fund claims. Based on DCCED's updated projection of probable caseload, OAH likely could not handle all of these cases without adding personnel unless OAH experiences a downturn in other parts of its caseload. OAH estimates needing a one-quarter time administrative law judge position in FY09, which the bill would take effect, and recovering the cost from DCCED through interagency receipts under OAH's cost allocation plan.

Prepared by: Terry L. Thurbon, Chief Administrative Law Judge
 Division: Office of Administrative Hearings
 Approved by: Kevin Brooks
 Agency: Department of Administration

Phone 465-1886
 Date/Time 04/16/2007 4:42 p.m.
 Date 4/16/2007

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR HUGGINS

TO: CSHB 162(), Draft Version "T"

1 Page 1, line 13, through page 2, line 2:

2 Delete "and licensee under AS 06.60; in this paragraph. "licensee under
3 AS 06.60" has the meaning given to "licensee" in AS 06.60.990"

4 Insert "a licensee under AS 06.60, a small mortgage lender under AS 06.60, and
5 an originator under AS 06.60 who is employed by or works under exclusive contract for
6 a small mortgage lender; in this paragraph,

7 (A) "licensee under AS 06.60" has the meaning given to
8 "licensee" in AS 06.60.990;

9 (B) "originator under AS 06.60" has the meaning given to
10 "originator" in AS 06.60.990;

11 (B) "small mortgage lender under AS 06.60" has the
12 meaning given to "small mortgage lender" in AS 06.60.990;"

13
14 Page 2, line 10:

15 Delete "A"

16 Insert "Except as provided by AS 06.60.017, a"

17
18 Page 3, following line 30:

19 Insert a new section to read:

20 "Sec. 06.60.017. Small mortgage lenders and originators. (a)

21 Notwithstanding AS 06.60.010, the department may register

22 (1) a person to operate as a small mortgage lender;

23 (2) a natural person to operate as an originator for a small mortgage

1 lender if the person is an employee of, or working under exclusive contract for, the
2 small mortgage lender.

3 (b) To qualify for registration as a small mortgage lender, a person shall

4 (1) submit an application on a form established by the department;

5 (2) pay a fee of \$150;

6 (3) certify that all money used in the operation of the person's business
7 as a small mortgage lender belongs to the person and is not borrowed or received from
8 another person; and

9 (4) be approved by the department under (d) of this section.

10 (c) To qualify for registration as an originator under this section, a person shall

11 (1) submit an application on a form established by the department;

12 (2) pay a fee of \$75;

13 (3) be approved by the department under (d) of this section.

14 (d) Before approving an application of a person under this section, the
15 department shall determine that

16 (1) if the person is applying for registration as a small mortgage lender,
17 the financial responsibility, experience, character, and general fitness of the person,
18 and of the person's directors, officers, members, owners, and other principals, and the
19 organization and operation of the applicant indicate that the business will be operated
20 efficiently and fairly, in the public interest, and under the law; and

21 (2) the person has not

22 (A) been enjoined by a court of competent jurisdiction from
23 engaging in an aspect of the business of providing financial services to the
24 public; and

25 (B) within the previous seven years,

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

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

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

3 (iv) made a false material statement on an application
4 submitted under this chapter; or

5 (v) violated a provision of this chapter, a regulation
6 adopted under this chapter, or an order of the department under this
7 chapter.

8 (e) A registration issued under this chapter remains in effect for two years
9 after the registration is issued.

10 (f) A small mortgage lender may renew a registration by submitting to the
11 department 30 days before the expiration of the registration

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

14 (2) a biennial registration fee of \$150; and

15 (3) a report identifying any changes in the information provided under
16 (b) of this section.

17 (g) An originator may renew a registration as an originator by submitting to
18 the department 30 days before the expiration of the licensee's registration

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

21 (2) a biennial registration fee of \$75; and

22 (3) a report identifying any changes in the information provided under
23 (c) of this section.

24 (h) An application under this section is considered granted unless, within 30
25 days after the department determines it has received a complete application, the
26 department notifies the applicant that the department has denied the application
27 because of the applicant's noncompliance with this section.

28 (i) The department may adopt regulations to implement this section

29 (j) In this section,

30 (1) "registration" means registration under this section;

31 (2) "small mortgage lender" means a person who is registered under

1 this section."

2

3 Page 16, line 22, following "license":

4 Insert "or a registration under AS 06.60.017"

5

6 Page 16, line 23, following "licensee":

7 Insert "or small mortgage lender"

8

9 Page 17, following line 3:

10 Insert a new paragraph to read:

11 "(2) the small mortgage lender has violated a provision of this chapter
12 applicable to the small mortgage lender;"

13

14 Renumber the following paragraphs accordingly.

15

16 Page 17, line 4, following "licensee":

17 Insert "or small mortgage lender"

18

19 Page 17, line 8, following "licensee":

20 Insert "or small mortgage lender"

21

22 Page 17, line 10, following "license":

23 Insert "or a registration under AS 06.60.017"

24

25 Page 17, line 13, following "license":

26 Insert "or the registration under AS 06.60.017"

27

28 Page 17, lines 14 - 15:

29 Delete "is not fit to engage in the activities for which the licensee was licensed"

30 Insert "or small mortgage lender is not fit to engage in the activities for which the
31 licensee was licensed or small mortgage lender was registered"

1

2 Page 17, line 18, following "business":

3 Insert "or the small mortgage lender's business"

4

5 Page 17, line 19, following "business":

6 Insert "or the small mortgage lender's business"

7

8 Page 17, line 22, following "license":

9 Insert "or the registration under AS 06.60.017"

10

11 Page 17, line 24, following "licensee":

12 Insert ", or the registration of a small mortgage lender,"

13

14 Page 17, line 27:

15 Delete ". A person whose license"

16 Insert "or registered under AS 06.60.017. A person whose license or registration under

17 AS 06.60.017"

18

19 Page 17, line 28, following "license":

20 Insert "or another registration under AS 06.60.017"

21

22 Page 18, line 11, following "license":

23 Insert "or a registration of a small mortgage lender"

24

25 Page 18, line 12, following "licensee":

26 Insert "or the small mortgage lender"

27

28 Page 18, line 13, following "licensee":

29 Insert "or small mortgage lender"

30

31 Page 18, line 15:

- 1 Delete "of revoked license"
- 2
- 3 Page 18, line 16:
- 4 Delete "if the licensee"
- 5 Insert "or registration under AS 06.60.017 if the licensee or small mortgage lender"
- 6
- 7 Page 18, line 18:
- 8 Delete ", the licensee"
- 9 Insert "or registration under AS 06.60.017, the licensee or small mortgage lender"
- 10
- 11 Page 18, line 22, following "chapter":
- 12 Insert "or a small mortgage lender"
- 13
- 14 Page 18, line 27, following "licensee":
- 15 Insert "or small mortgage lender"
- 16
- 17 Page 18, line 31, following "licensee":
- 18 Insert "or small mortgage lender"
- 19
- 20 Page 19, line 1, following "licensee":
- 21 Insert "or small mortgage lender"
- 22
- 23 Page 20, line 9, following "person":
- 24 Insert ", including a small mortgage lender,"
- 25
- 26 Page 20, line 13, following "person":
- 27 Insert ", including a small mortgage lender,"
- 28
- 29 Page 20, line 26, following "chapter,":
- 30 Insert "a person who is a small mortgage lender,"
- 31

1 Page 22, line 10, following "license,":

2 Insert "registration,"

3

4 Page 24, line 1, following "licensee":

5 Insert "or small mortgage lender"

6

7 Page 24, line 5, following "person":

8 Insert ", including a small mortgage lender,"

9

10 Page 24, line 7, following "licensee":

11 Insert ", person who is a small mortgage lender,"

12

13 Page 24, line 11, following "licensee":

14 Insert "or a small mortgage lender"

15

16 Page 24, line 14, following "license":

17 Insert "or without being registered under AS 06.60.017,"

18

19 Page 24, line 21, following "person":

20 Insert ", including a small mortgage lender,"

21

22 Page 24, line 25, following "months,":

23 Insert "suspend the registration of a small mortgage lender for a period not to exceed
24 12 months,"

25

26 Page 24, line 26, following "licensee":

27 Insert "or a small mortgage lender"

28

29 Page 24, line 30, following "licensee":

30 Insert ", to the small mortgage lender,"

31

1 Page 25, line 3, following "license":

2 Insert "or registration as a small mortgage lender"

3

4 Page 25, line 6, following "licensee":

5 Insert "or a small mortgage lender"

6

7 Page 25, line 7:

8 Delete "licensee is conducting the licensee's business"

9 Insert "licensee or small mortgage lender is conducting the licensee's or small
10 mortgage lender's business"

11

12 Page 25, line 9, following "licensee":

13 Insert "or a small mortgage lender"

14

15 Page 25, line 10, following "person":

16 Insert ", including a small mortgage lender,"

17

18 Page 25, line 17, following "licensee":

19 Insert "or a small mortgage lender"

20

21 Page 25, line 21, following "licensee":

22 Insert ", a small mortgage lender."

23

24 Page 25, line 22, following "licensee":

25 Insert "or small mortgage lender"

26

27 Page 25, following line 30:

28 Insert a new section to read:

29 "Sec. 06.60.440. Definition. In AS 06.60.400 - 06.60.440, "small mortgage
30 lender" includes a natural person who is an employee of, or working under exclusive
31 contract for, a small mortgage lender."

1

2 Page 32, line 23, following the first occurrence of "person":

3 Insert ", including a small mortgage lender,"

4

5 Page 33, line 3, following "person":

6 Insert ", including a small mortgage lender to the extent this chapter applies to a small
7 mortgage lender,"

8

9 Page 37, line 7, following "purposes":

10 Insert ":

11 (26) "small mortgage lender" means a person registered under

12 AS 06.60.017"

adopted

SENATE FINANCE
COMMITTEE

Amendment # 3

To Bill Number: HB 162

Sponsor: Elton

Date: 5/11/07 logged by: Robin

AMENDMENT

Offered in the Senate Finance Committee
To: SCS HB 162

Page 21, line 27:

Delete "(A)"

Page 21, line 29:

Delete the second occurrence of "or"

Page 21, line 30 through page 22, line 1:

Delete all material.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 12 May 2007 TIME: 10:30am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
SCS CS HB 162 (FIN) 2F-LS0070\T
Bannister 5/11/07
plus 2 amendments:
2: \T.1
3: attached

Thanks
Mindy

SENATE CS FOR CS FOR HOUSE BILL NO. 162(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LYNN

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, n

Amendment
#2
page 1
lines 2-12

1 licensee under AS 06.60, a small mortgage lender under AS 06.60, and an
2 originator under AS 06.60 who is employed by or works under exclusive contract
3 for a small mortgage lender; in this paragraph,

#2
Page 1
lines 2:12

4 (A) "licensee under AS 06.60" has the meaning given to
5 "licensee" in AS 06.60.990;

6 (B) "originator under AS 06.60" has the meaning given to
7 "originator" in AS 06.60.990;

8 (C) "small mortgage lender under AS 06.60" has the
9 meaning given to "small mortgage lender" in AS 06.60.990;

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

11 Chapter 60. Mortgage Lending Regulation Act.

12 Article 1. Licensing.

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

17 (b) Except as provided by AS 06.60.017, a person may not operate as an
18 originator in this state unless the person is a natural person who is

#2
line 16

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

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

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

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

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

30 (1) a person who is authorized to engage in business as a bank, bank
31 holding company, savings institution, savings and loan association, trust company

1 with banking powers, or credit union under the laws of this state, another state, the
2 United States, a territory of the United States, or the District of Columbia, and whose
3 mortgage loan activity is subject to the general supervision, regulation, and
4 examination of a regulatory body of this state, another state, the United States, a
5 territory of the United States, or the District of Columbia;

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

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

12 (4) an exclusive agent of a person identified in (1) or (2) of this
13 section, if the person identified in (1) or (2) of this section has received a
14 determination from a regulatory body of the United States government, based on
15 applicable federal law, that the exclusive agent is exempt from this chapter;

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

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

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

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

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

31 (b) A person who is listed in (a)(1) - (9) of this section shall file a registration

1 form to obtain an exemption under (a) of this section. The department shall determine
2 the form and content of the registration form.

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

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

7 **Sec. 06.60.017. Small mortgage lenders and originators.** (a)
8 Notwithstanding AS 06.60.010, the department may register

9 (1) a person to operate as a small mortgage lender;
10 (2) a natural person to operate as an originator for a small mortgage
11 lender if the person is an employee of, or working under exclusive contract for, the
12 small mortgage lender.

13 (b) To qualify for registration as a small mortgage lender, a person shall
14 (1) submit an application on a form established by the department;
15 (2) pay a fee of \$150;
16 (3) certify that all money used in the operation of the person's business
17 as a small mortgage lender belongs to the person and is not borrowed or received from
18 another person; and

19 (4) be approved by the department under (d) of this section.
20 (c) To qualify for registration as an originator under this section, a person shall
21 (1) submit an application on a form established by the department;
22 (2) pay a fee of \$75;
23 (3) be approved by the department under (d) of this section.

24 (d) Before approving an application of a person under this section, the
25 department shall determine that

26 (1) if the person is applying for registration as a small mortgage lender,
27 the financial responsibility, experience, character, and general fitness of the person,
28 and of the person's directors, officers, members, owners, and other principals, and the
29 organization and operation of the applicant indicate that the business will be operated
30 efficiently and fairly, in the public interest, and under the law; and

31 (2) the person has not

2
page 1
line 20
through
page 4
line 1

1 (A) been enjoined by a court of competent jurisdiction from
2 engaging in an aspect of the business of providing financial services to the
3 public; and

4 (B) within the previous seven years,

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

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

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

13 (iv) made a false material statement on an application
14 submitted under this chapter; or

15 (v) violated a provision of this chapter, a regulation
16 adopted under this chapter, or an order of the department under this
17 chapter.

18 (c) A registration issued under this chapter remains in effect for two years
19 after the registration is issued.

20 (f) A small mortgage lender may renew a registration by submitting to the
21 department 30 days before the expiration of the registration

22 (1) a renewal application in the form and manner established by the
23 department;

24 (2) a biennial registration fee of \$150; and

25 (3) a report identifying any changes in the information provided under
26 (b) of this section.

27 (g) An originator may renew a registration as an originator by submitting to
28 the department 30 days before the expiration of the licensee's registration

29 (1) a renewal application in the form and manner established by the
30 department;

31 (2) a biennial registration fee of \$75; and

1 (3) a report identifying any changes in the information provided under
2 (c) of this section.

3 (h) An application under this section is considered granted unless, within 30
4 days after the department determines it has received a complete application, the
5 department notifies the applicant that the department has denied the application
6 because of the applicant's noncompliance with this section.

7 (i) The department may adopt regulations to implement this section

8 (j) In this section,

9 (1) "registration" means registration under this section;

10 (2) "small mortgage lender" means a person who is registered under
11 this section.

12 **Sec. 06.60.020. Application for mortgage license.** An application for a
13 mortgage license must

14 (1) be in writing;

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

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

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

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

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

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

28 (B) more than 50 percent of the outstanding voting shares in
29 the corporation, if the corporation has 75 or more shareholders;

30 (7) if the applicant is a limited liability company, contain the name and
31 both the residence and business addresses of each member of the company, and any

1 manager of the company who individually owns more than 50 percent of the limited
2 liability company;

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

6 (9) if requested by the department, include a complete set of
7 fingerprints of the applicant and of the directors, officers, members, owners, and other
8 principals of the applicant as specified by the department to obtain a report of criminal
9 justice information and a national criminal history record check;

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

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

16 (1) be in writing;

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

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

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

20 (5) include a complete set of fingerprints of the applicant to obtain a
21 report of criminal justice information and a national criminal history record check; 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. 06.60.026. Transfer of originator license.** A person who holds an
26 originator license may not transfer or assign the originator license.

27 **Sec. 06.60.027. Fingerprint submissions.** The department shall submit
28 fingerprints provided under AS 06.60.020 and 06.60.025 to the Department of Public
29 Safety to obtain a report of criminal justice information under AS 12.62 and a national
30 criminal history record check under AS 12.62.400.

31 **Sec. 06.60.030. Investigation.** The department shall investigate an applicant

1 for a license to determine if the applicant satisfies the requirements of this chapter for
2 the license.

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

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

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

11 (b) An applicant shall pay all reasonable costs and reasonable investigative
12 fees incurred by the department before the department issues a license.

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

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

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

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

29 (b) The bond required by (a) of this section shall be for the use of the
30 department, the Department of Law, or another person to recover for a claim for relief
31 against the obligor under this chapter. The bond must state that the obligor will

1 faithfully conform to and abide by the provisions of this chapter and all regulations
 2 adopted under this chapter and will pay the department, the Department of Law, or
 3 another person all money that may become due or owing to the department, the
 4 Department of Law, or the other person from the obligor under this chapter.

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

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

9 (e) If the department determines that the bond required under (a) of this
 10 section is unsatisfactory for any reason, the department may require the mortgage
 11 licensee to file with the department, within 10 days after the receipt of a written
 12 demand from the department, an additional bond that complies with the provisions of
 13 this section.

14 **Sec. 06.60.050. Decision on application.** (a) Within 30 days after the date the
 15 department determines that it has received a complete application under AS 06.60.020
 16 or 06.60.025, the required bond if the application is for a mortgage license, and any
 17 required fees and investigative costs are received by the department, the department
 18 shall either grant or deny the license.

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

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

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

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

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

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

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

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

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

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

13 (B) been convicted, including a conviction based on a plea of
14 guilty, no contest, or nolo contendere, of a felony or a misdemeanor involving
15 fraud, misrepresentation, or dishonesty;

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

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

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

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

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

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

1 **Sec. 06.60.080. Duration of license.** A license issued under this chapter
 2 remains in effect for two years after the license is issued unless revoked, suspended,
 3 surrendered, or becoming inactive under this chapter.

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

7 (1) a renewal application in the form and manner established by the
 8 department;

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

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

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

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

17 (b) A renewal under (a) of this section is considered granted unless, within 30
 18 days after the department determines it has received a completed renewal application
 19 containing the items in (a) of this section, the department notifies the licensee that the
 20 department has denied the renewal application because of the licensee's
 21 noncompliance with this title.

22 **Sec. 06.60.090. Inactive license.** (a) A license may become inactive under this
 23 section.

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

26 (c) For a license to become inactive, a licensee shall provide the department
 27 with a written request that the license become inactive and return the license certificate
 28 to the department. The request must include the licensee's name, address, and other
 29 information that the department requires to process the request and a statement by the
 30 licensee that all mortgage loans of the licensee have been paid in full or sold.

31 (d) The department shall issue an inactive license certificate to a person whose

1 license becomes inactive under this section.

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

5 (f) If a license becomes inactive under this section, the license remains
6 inactive until the license expires, the person surrenders the license, or the person who
7 holds the inactive license provides the department with a written request that the
8 license be reactivated. The request must include the information that the department
9 requires to process the request.

10 (g) While a license is inactive under this section, the person holding the
11 inactive license shall pay the biennial license fee as required by AS 06.60.105 and
12 inform the department of any change that occurs in the name and address of the
13 person, the location of the person's business, or in the business operations or control of
14 the person, but the person is not required to maintain the bond required by
15 AS 06.60.045 or to file the annual report required by AS 06.60.100.

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

19 (i) While a license is inactive under this section, the person is not required to
20 surrender the license under AS 06.60.097(b).

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

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

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

31 (m) A person holding a license that is inactive under this section may not

1 engage in activities for which the license is required, but may receive commissions or
 2 other payments from a person who contracted with or employed the licensee for
 3 services, if the services were performed while the licensee was actively licensed.

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

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

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

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

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

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

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

27 **Article 3. Licensee Obligations.**

28 **Sec. 06.60.100. Annual report.** (a) On or before March 15, or on another date
 29 established by the department by regulation, of each year a mortgage licensee shall file
 30 a report with the department giving relevant information that the department requires
 31 concerning the business and operations of each location in this state where the

1 mortgage licensee conducts business in this state during the preceding calendar year.
2 The mortgage licensee shall make the report under oath or on affirmation. The content
3 and form of the report shall be established by the department by regulation.

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

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

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

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

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

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

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

26 **Sec. 06.60.115. Change of place of business.** If a mortgage licensee wishes to
27 change the mortgage licensee's place of business to another location, the mortgage
28 licensee shall submit a written notice to the department at least 10 days before
29 relocating the business. If the mortgage licensee is otherwise in compliance with this
30 chapter, the department shall issue a revised mortgage license to the mortgage licensee
31 that reflects the new location.

1 **Sec. 06.60.120. Transfer of business.** A mortgage licensee may only transfer
2 or assign the licensee's business if

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

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

9 (3) the department determines that the proposed transferee or assignee
10 complies with AS 06.60.060.

11 **Sec. 06.60.130. Change in business control or business operations.** (a) The
12 prior written approval of the department is required for the continued operation of a
13 mortgage licensee's business when a change in control of the mortgage licensee is
14 proposed. The department may require the information it considers necessary to
15 determine whether a new application is required. The mortgage licensee requesting
16 approval of the change in control shall pay all reasonable expenses incurred by the
17 department to investigate and approve or deny the change in control.

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

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

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

28 (c) A mortgage licensee shall maintain a record of the account of each
29 borrower and for each mortgage loan or mortgage loan application that is related to the
30 purchase or refinancing of an existing mortgage loan. This record must contain all
31 documents, work papers, electronic correspondence, and forms that are produced or

1 prepared for the mortgage loan by the mortgage licensee, and the mortgage licensee
2 shall retain each document, work paper, electronic correspondence, and form for 36
3 months from the date they were created.

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

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

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

28 **Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee
29 who operates an office or other place of business outside this state shall, at the request
30 of the department,

31 (1) make the records of the office or place of business available to the

1 department at a location within this state; or

2 (2) reimburse the department its reasonable costs, as provided in
3 AS 06.60.250(f), that are incurred by the department in conjunction with an
4 investigation or examination conducted at the office or place of business.

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

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

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

19 (d) In this section,

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

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

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

24 (B) more than 50 percent, if the mortgage licensee is a
25 corporation with 75 or more shareholders or a limited liability company.

26 **Sec. 06.60.150. Posting of license.** A mortgage licensee shall conspicuously
27 post the mortgage license in each place of business of the mortgage licensee in the
28 state.

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

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

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

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

13 **Sec. 06.60.160. Continuing education requirements.** (a) An originator
14 licensee shall complete and submit to the department evidence of at least 24 hours of
15 continuing education for each biennial license period. The originator licensee or
16 mortgage licensee shall submit the evidence when the originator licensee or mortgage
17 licensee submits a license renewal application or an application for reactivation under
18 AS 06.60.095. The 24 hours of continuing education must be in training programs
19 approved by the department.

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

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

29 (d) The department shall publish on a regular basis a listing of training
30 programs that may be used to satisfy the continuing education requirements of this
31 section.

Article 4. Discipline and Investigation.

Sec. 06.60.200. Disciplinary action. (a) In addition to any other disciplinary action allowed under this chapter, the department may suspend or revoke a license or a registration under AS 06.60.017 or take other disciplinary action against a licensee or small mortgage lender, including action under AS 06.01 or a regulation adopted under this chapter or AS 06.01, if the department finds that

#2
page 4
line 4

line 7

(1) the licensee failed to

(A) make a payment required by this chapter;

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

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

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

(2) the small mortgage lender has violated a provision of this chapter applicable to the small mortgage lender;

lines 11 & 12

(3) the licensee or small mortgage lender has, with respect to a mortgage loan transaction,

line 17

(A) made a material misrepresentation;

(B) made a false promise;

(C) engaged in a serious course of misrepresentation or made a false promise through another licensee or small mortgage lender;

line 20

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

(E) procured, or helped another person to procure, a license or a registration under AS 06.60.017 by deceiving the department;

line 23

(F) engaged in conduct of which the department did not have knowledge when the department issued the license or the registration under AS 06.60.017, if the conduct demonstrates that the licensee or small mortgage lender is not fit to engage in the activities for which the licensee was licensed

line 26

lines 28-31

1 or small mortgage lender was registered;

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

8 (4) a fact or condition exists that would have constituted grounds for
9 denial of the initial issuance or the renewal of the license or the registration under
10 AS 06.60.017.

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, or the registration of a small
13 mortgage lender, who is convicted, including conviction by a plea of not guilty, no
14 contest, or nolo contendere, of a felony or misdemeanor involving fraud,
15 misrepresentation, or dishonesty committed while licensed under this chapter or
16 registered under AS 06.60.017. A person whose license or registration under
17 AS 06.60.017 is revoked under this subsection is not qualified to receive a new license
18 or another registration under AS 06.60.017 until the person provides proof acceptable
19 to the department that the person has been unconditionally discharged from the
20 conviction. In this subsection, "unconditional discharge" has the meaning given in
21 AS 12.55.185.

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

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

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

#2
Page 5
line 3

line 6

line 9

line 12

lines 16 &
17

line 20

subsection.

Sec. 06.60.230. Divestment. If the department revokes a mortgage license or a registration of a small mortgage lender, the mortgage licensee or the small mortgage lender shall divest itself of all outstanding loans that were issued under this chapter by selling or assigning them to another mortgage licensee or small mortgage lender. Divestment under this section must be approved by the department.

Sec. 06.60.240. Reinstatement. ^{deleted "of revoked license"} The department may reinstate a revoked license or registration under AS 06.60.017 if the licensee or small mortgage lender complies with this chapter or with a demand, ruling, or requirement made by the department under this chapter. Before reinstatement of a license or registration under AS 06.60.017, the licensee or small mortgage lender shall pay any fees, restitution, and civil penalties owing under this chapter.

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

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

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

(2) may conduct the examination without prior notice to the licensee or small mortgage lender; and

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

(c) For the purpose of hearings, investigations, or other proceedings under this chapter and except as otherwise provided in this chapter, the department or an officer

#2
Page 5
line 23

line 26

line 29

Page 6
line 1

line 5

line 9

line 12

line 15

line 18

line 21

1 designated by the department may administer oaths and affirmations, subpoena
2 witnesses, compel the attendance of witnesses, take evidence, and require the
3 production of books, papers, correspondence, memoranda, agreements, or other
4 documents or records that the department considers relevant or material to the matter.

5 (d) If a person refuses to comply with a subpoena, the superior court, on
6 application by the department, may issue to the person an order requiring the person to
7 appear before the department to produce documentary evidence or to give evidence
8 touching the matter under investigation or in question.

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

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

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

24 **Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove an
25 originator licensee from acting as an originator for the mortgage licensee if the
26 department directs the mortgage licensee to remove the originator licensee under
27 AS 06.60.260.

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

Article 5. Business Duties and Restrictions.

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

#2
page 6
line 24

Sec. 06.60.330. Compliance with federal requirements. A person, including a small mortgage lender, subject to this chapter shall conduct the person's mortgage loan activities in compliance with 12 CFR Part 226 and other regulations adopted by the federal government under

line 27

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

Sec. 06.60.340. Prohibited activities. In addition to activities prohibited elsewhere in this chapter or by law, a person who is a licensee, a person who is required to be licensed under this chapter, a person who is a small mortgage lender, and a person who is licensed under AS 06.20 may not misrepresent or conceal material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to enter into a mortgage loan transaction, or, in the course of a mortgage loan transaction,

line 30

- (1) pursue a course of misrepresentation through an agent;
- (2) improperly refuse to issue a satisfaction of a mortgage loan;
- (3) fail to account for or deliver to a person money, a document, or another thing of value obtained in connection with a mortgage loan, including money provided for a real estate appraisal or a credit report if the person is not entitled to

1 retain the money under the circumstances;

2 (4) pay, receive, or collect, in whole or in part, a commission, fee, or
3 other compensation for brokering a mortgage loan in violation of this chapter,
4 including a mortgage loan brokered by an unlicensed person other than an exempt
5 person under AS 06.60.015;

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

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

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

15 (A) consider additional appropriate property information;

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

18 (C) correct errors in the appraisal report;

19 (8) in a loan commitment or prequalification letter, make a false or
20 misleading statement, or omit relevant information or conditions that the person knew
21 or reasonably should have known from a preliminary examination of the borrower's
22 loan application, credit report, assets, and income, except that this paragraph does not
23 apply if ^{deleted} the borrower made a false or misleading statement or omitted relevant
24 information in the loan application that the person relied on when issuing the loan
25 commitment or prequalification letter;

26 ^{deleted "(B)" & its language}
(9) engage in a practice or course of business in which the ultimate
27 rates, terms, or costs of mortgage loans are materially worse for the borrowers than
28 they are represented to be in the first good faith estimates the person provides to the
29 borrowers; this paragraph does not apply if

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

#3

#3

1 (B) new or changed information from the borrower makes it
2 necessary to change the loan program offered to the borrower;

3 (10) represent that the person has a license, registration, title,
4 certification, sponsorship, approval, status, affiliation or connection that the person
5 does not have;

6 (11) engage in unfair, deceptive, or fraudulent mortgage loan practices
7 or advertising.

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

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

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

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

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

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

21 (5) the mortgage loan changes from an adjustable rate loan to a fixed
22 rate loan; in a determination under this paragraph, the department may take into
23 account costs and fees;

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

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

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

30 **Sec. 06.60.360. Escrow accounts.** (a) A covered person and a borrower may
31 agree that the covered person will keep in an escrow account all money that the

#2
page 7
line 2

1 borrower is required to pay to defray future taxes or insurance premiums or for other
 2 lawful purposes. The escrow account must be segregated from the other accounts of
 3 the covered person and be subject to a written escrow agreement. The covered person
 4 may not commingle the borrower's money with the general funds of the covered
 5 person. Money deposited in an escrow account under this subsection shall be
 6 maintained in the account until it is disbursed in accordance with the written escrow
 7 agreement.

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

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

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

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

26 **Sec. 06.60.370. Criminal liability of licensee or small mortgage lender.** (a)
 27 The department may report violations of (b) - (e) of this section to the attorney
 28 general, who may institute the proper proceedings to enforce the criminal penalties
 29 provided in (b) - (e) of this section.

30 (b) A person, including a small mortgage lender, who knowingly provides
 31 false or misleading information to the department that is material under this chapter is

#2
 page 7
 line 5

line 8

1 guilty of a class A misdemeanor.

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

6 (d) A licensee or a small mortgage lender who knowingly fails to disburse
7 money belonging to the borrower without just cause is guilty of a class A
8 misdemeanor.

9 (e) A mortgage lender, mortgage broker, or originator who knowingly
10 operates without a license or without being registered under AS 06.60.017, and is not
11 exempt under AS 06.60.015 is guilty of a class A misdemeanor.

12 **Sec. 06.60.380. Definition of "covered person."** In AS 06.60.320 -
13 06.60.380, "covered person" means a mortgage licensee or a person who is licensed
14 under AS 06.20.

15 **Article 6. Enforcement.**

16 **Sec. 06.60.400. Cease and desist orders.** The department may issue, under
17 AS 06.01.030, an order directing a person, including a small mortgage lender, to cease
18 and desist.

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

- 26 (1) the censure, suspension, or bar is in the public interest;
- 27 (2) the person has knowingly committed or caused a violation of this
28 chapter or a regulation adopted under this chapter; and
- 29 (3) the violation has caused material damage to the licensee, to the
30 small mortgage lender, or to the public.

31 (b) When a person who is the subject of a proposed order under this section

#2
Page 7
line 11

line 14

line 17

line 20

lines 23 +
24

line 27

line 30

1 receives a notice of the department's intention to issue an order under this section, the
2 person is immediately prohibited from engaging in any activities for which a license or
3 registration as a small mortgage lender is required under this chapter.

#2
page 8
line 2

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

line 5
lines 9
+ 10

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

line 13
line 16

13 (b) The remedies provided by this section and by other sections of this chapter
14 are not exclusive and may be applied in combination with other remedies to enforce
15 the provisions of this chapter.

16 **Sec. 06.60.430. Additional enforcement provisions, actions, and rights.** (a)
17 The department may treat a licensee or a small mortgage lender as a financial
18 institution under AS 06.01 when applying the enforcement provisions of AS 06.01.

line 19

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

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

line 22
line 25

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

31 **Sec. 06.60.440. Definition.** In AS 06.60.400 - 06.60.440, "small mortgage

lines
29-31



1 lender" includes a natural person who is an employee of, or working under exclusive
2 contract for, a small mortgage lender.

3 Article 7. Originator Surety Fund.

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

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

10 Sec. 06.60.520. Use of fund. The legislature may appropriate the money
11 collected in the fund under AS 06.60.510 to the department to implement
12 AS 06.60.500 - 06.60.750, including paying claims, holding hearings, and incurring
13 legal expenses and other expenses directly related to fund claims and the operation of
14 the fund. Nothing in AS 06.60.500 - 06.60.750 creates a dedicated fund.

15 Sec. 06.60.530. Fund report. Every six months the department shall provide a
16 written report to the director of the office of management and budget on the activities
17 of the fund, the balances in the fund, interest earned on the fund, and interest returned
18 to the fund.

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

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

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

29 (b) Every two years, if the department determines that the average balance in
30 the fund during the previous two years was less than \$250,000 or more than \$500,000,
31 the department shall, unless the department waives the adjustment, adjust the fund fee

1 so that the average balance of the fund during the next two years is anticipated to be an
 2 amount that is not less than \$250,000 or more than \$500,000. In this subsection,
 3 "average balance" means the average balance in the fund after the department deducts
 4 anticipated expenditures for claims against the fund and for hearing and legal expenses
 5 directly related to fund operations and claims.

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

8 (d) Notwithstanding (a) of this section, an originator licensee who obtains an
 9 initial originator license when the department has reduced the fund fee to nothing shall
 10 nonetheless pay a fund fee of \$150 to the department for the first year of the originator
 11 license or, for a mortgage licensee, of operating as an originator.

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

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

23 **Sec. 06.60.580. Form and contents of fund claim.** The form for a fund claim
 24 shall be ~~filed~~ under penalty of unsworn falsification and must include

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

31 **Sec. 06.60.590. Claim hearing.** Except as otherwise provided by

1 AS 06.60.610, a hearing on a fund claim shall be handled by the office of
2 administrative hearings (AS 44.64.010).

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

7 (1) each originator licensee alleged to have committed the misconduct
8 resulting in the alleged loss;

9 (2) the employer of the originator licensee described in (1) of this
10 section; and

11 (3) any other parties involved in the mortgage loan transaction that is
12 the subject of the fund claim.

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

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

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

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

28 (b) The department shall refund the filing fee required under this section if the

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

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

31 (3) fund claim is withdrawn by the claimant before the office of

1 administrative hearings (AS 44.64.010) holds a hearing on the fund claim.

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

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

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

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

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

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

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

30 **Sec. 06.60.690. Fund operations.** The department shall deposit into the fund
31 money that the department recovers from an originator licensee under AS 06.60.745.

1 The department may not consider amounts paid from the fund for hearing or legal
2 expenses when determining the maximum reimbursement to be awarded under
3 AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

4 **Sec. 06.60.700. Payment of small claims judgment.** (a) If a fund claim
5 dismissed under AS 06.60.610 results in a monetary award against an originator
6 licensee, the department may pay, subject to AS 06.60.710 and 06.60.720, any
7 outstanding portion of the small claims judgment from money appropriated to the
8 department for the purpose.

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

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

17 **Sec. 06.60.710. Maximum liability.** (a) Payment of a fund claim may not
18 exceed \$15,000 for each claimant and \$15,000 for each mortgage loan transaction
19 regardless of the number of persons injured or the number of pieces of residential
20 property involved in the mortgage loan transaction.

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

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

30 **Sec. 06.60.720. Order of fund claim payment.** If the money appropriated to
31 the department for payment under AS 06.60.520 - 06.60.750 is insufficient to satisfy

1 an award under AS 06.60.680 for a fund claim, the department shall, when sufficient
2 money has been appropriated to the department for the purpose, satisfy unpaid fund
3 claims in the order the fund claims were originally filed, plus accumulated interest at
4 the rate allowed under AS 45.45.010(a).

5 **Sec. 06.60.730. False claims or documents.** A person who files a notice,
6 statement, or other document under AS 06.60.500 - 06.60.750 that contains a material
7 misstatement of fact is guilty of a class A misdemeanor.

8 **Sec. 06.60.740. Right to subrogation.** When the department has paid to a
9 claimant the sum awarded under AS 06.60.680 or 06.60.700 and any amount due
10 under AS 06.60.720, the department shall be subrogated to all of the rights of the
11 claimant to the amount paid, and the claimant shall assign all right, title, and interest in
12 that portion of the claim to the department. Money collected by the department on the
13 claim shall be deposited in the fund.

14 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
15 portion of a fund claim against an originator licensee under AS 06.60.680 or
16 06.60.700, the department may recover from the originator licensee, in addition to the
17 payment of the fund claim, the expenses incurred by the department to process and
18 otherwise handle the fund claim.

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

22 **Article 8. Program Administration Fee.**

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

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

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

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

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

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

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

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

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

19 **Sec. 06.60.860. Authority of department.** The department may make a ruling,
20 demand, or finding that the department determines is necessary for the proper conduct
21 of a licensee's business regulated by this chapter or for the enforcement of this chapter,
22 including an order for the payment of restitution. The ruling, demand, or finding must
23 be consistent with this chapter.

24 **Article 10. Miscellaneous Provisions.**

25 **Sec. 06.60.890. Application to Internet activities.** This chapter applies to a
26 person, including a small mortgage lender, to the extent this chapter applies to a small
27 mortgage lender, even if the person is engaging in the activities regulated by this
28 chapter by using an Internet website from within or outside the state.

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

#2
page 9
lines 3,
6 & 7

Note: Variation of the placement of language
as shown in amendment is technical per Legal Services
Terry Barrister
SCS CSIB 162(FIN)
Now Text Underlined (DELETED TEXT BRACKETED)

1 and a borrower.

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

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

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

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

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

20 **Article 11. General Provisions.**

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

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

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

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

27 (4) "control," except as provided in AS 06.60.065, means

28 (A) the ownership of, or the power to vote, directly or
29 indirectly, at least 25 percent of a class of voting securities or voting interests;

30 (B) the power to elect a majority of executive officers,
31 managers, directors, trustees, or other persons exercising managerial authority;

#2
Page 9
lines
6-7

1 or

2 (C) the power to exercise, directly or indirectly, a controlling
3 influence over management or policies or person in control;

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

7 (6) "escrow account" means an account

8 (A) to which a borrower makes payments for obligations
9 related to the real property that is the subject of a mortgage loan of the
10 borrower;

11 (B) held by a third person; and

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

16 (7) "fund" means the originator surety fund established by
17 AS 06.60.500;

18 (8) "fund claim" means a claim authorized under AS 06.60.560;

19 (9) "fund fee" means the fee that is required to be paid by
20 AS 06.60.550;

21 (10) "knowingly" has the meaning given in AS 11.81.900;

22 (11) "license" means a license issued under this chapter;

23 (12) "licensee" means a person who holds a license issued under this
24 chapter;

25 (13) "mortgage broker" means a person who, for compensation or gain,
26 or in the expectation of compensation or gain, directly or indirectly, by telephone, by
27 electronic means, by mail, through the Internet, in person, or by the person itself or an
28 originator who is an employee or under exclusive contract to the person,

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

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

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

8 (15) "mortgage lender license" means a license issued under this
9 chapter to operate as a mortgage lender;

10 (16) "mortgage lender licensee" means a person who holds a mortgage
11 lender license;

12 (17) "mortgage license" means a mortgage lender license or a
13 mortgage broker license;

14 (18) "mortgage licensee" means a mortgage lender licensee or a
15 mortgage broker licensee;

16 (19) "mortgage loan"

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

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

23 (C) does not include loans

24 (i) or extensions of credit to buyers of real property for
25 a part of the purchase price of the property by persons selling the
26 property owned by them;

27 (ii) to persons related to the lender by blood or
28 marriage;

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

30 (iv) made primarily for a business, commercial, or
31 agricultural purpose of the borrower or for construction of residential

1 property;

2 (20) "operate" means do business, offer to provide, or provide;

3 (21) "originator"

4 (A) means a natural person who, for compensation or gain, or
5 in the expectation of compensation or gain, directly or indirectly, by telephone,
6 by electronic means, by mail, or in person

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

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

11 (iii) solicits or offers to solicit a mortgage loan for a
12 potential borrower;

13 (iv) negotiates or offers to negotiate the terms or
14 conditions of a mortgage loan with or for a borrower or potential
15 borrower; or

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(22) "originator license" means a license issued to a person to operate as an originator;

(23) "originator licensee" means a person who holds an originator license;

(24) "program administration fee" means the fee described under AS 06.60.800(a);

(25) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(26) "residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes;

(27) "small mortgage lender" means a person registered under AS 06.60.017.

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

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

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

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

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

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

(A) child support;

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

(C) state or local taxes;

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

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

Corrected Version "T"

#2 page 9 lines

11 & 12

1 for that purpose;

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

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

6 (3) a creditor may make a levy against exempt property of any kind to
7 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
8 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
9 results in a conviction of a crime or an adjudication of delinquency, except that the
10 debtor is entitled to an exemption in property

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

13 (i) household goods and wearing apparel reasonably
14 necessary for one household;

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

17 (iii) family portraits and heirlooms of particular
18 sentimental value to the debtor; and

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

21 * Sec. 5. AS 12.62.400 is amended by adding a new paragraph to read:

22 (15) licensure as a mortgage lender, a mortgage broker, or an
23 originator under AS 06.60.

24 * Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

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

27 * Sec. 7. AS 44.64.030(a)(5) is amended to read:

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

30 * Sec. 8. AS 45.50.471(b) is amended by adding a new paragraph to read:

31 (52) violating AS 06.60.010 - 06.60.380 (mortgage lending

1 regulation);

2 * Sec. 9. AS 45.50.481 is amended by adding a new subsection to read:

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

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

7 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND
8 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a
9 person who is engaging in activities for which a license is required under AS 06.50, enacted
10 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to
11 comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section,
12 "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

13 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

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

19 * Sec. 12. Section 11 of this Act takes effect immediately under AS 01.10.070(c).

20 * Sec. 13. Except as provided in sec. 12 of this Act, this Act takes effect July 1, 2008.

Adopted
5/12/07

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0070VT
Bannister
5/11/07

SENATE CS FOR CS FOR HOUSE BILL NO. 162()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LYNN

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) an exclusive agent of a person identified in (1) or (2) of this
6 section, if the person identified in (1) or (2) of this section has received a
7 determination from a regulatory body of the United States government, based on
8 applicable federal law, that the exclusive agent is exempt from this chapter;

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

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

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

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

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

24 (b) A person who is listed in (a)(1) - (9) of this section shall file a registration
25 form to obtain an exemption under (a) of this section. The department shall determine
26 the form and content of the registration form.

27 (c) A person who is licensed under AS 06.20 is exempt from the requirements
28 of this chapter, except that the person is subject to AS 06.60.20 - 06.60.380.

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

31 **Sec. 06.60.020. Application for mortgage license.** An application for a

1 mortgage license must

2 (1) be in writing;

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

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

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

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

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

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

16 (B) more than 50 percent of the outstanding voting shares in
17 the corporation, if the corporation has 75 or more shareholders;

18 (7) if the applicant is a limited liability company, contain the name and
19 both the residence and business addresses of each member of the company, and any
20 manager of the company who individually owns more than 50 percent of the limited
21 liability company;

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

25 (9) if requested by the department, include a complete set of
26 fingerprints of the applicant and of the directors, officers, members, owners, and other
27 principals of the applicant as specified by the department to obtain a report of criminal
28 justice information and a national criminal history record check;

29 (10) contain other information that the department may require
30 concerning the organization and operations of the applicant and the financial
31 responsibility, background, experience, and activities of the applicant and its directors,

1 officers, members, owners, and other principals.

2 **Sec. 06.60.025. Application for originator license.** An application for an
3 originator license must

- 4 (1) be in writing;
- 5 (2) be signed by the applicant and notarized;
- 6 (3) be on a form prescribed by the department;
- 7 (4) contain the name and residence address of the applicant;
- 8 (5) include a complete set of fingerprints of the applicant to obtain a
9 report of criminal justice information and a national criminal history record check; and
- 10 (6) contain other information or supporting material that the
11 department may require concerning the applicant, including other forms of
12 identification of the applicant.

13 **Sec. 06.60.026. Transfer of originator license.** A person who holds an
14 originator license may not transfer or assign the originator license.

15 **Sec. 06.60.027. Fingerprint submissions.** The department shall submit
16 fingerprints provided under AS 06.60.020 and 06.60.025 to the Department of Public
17 Safety to obtain a report of criminal justice information under AS 12.62 and a national
18 criminal history record check under AS 12.62.400.

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

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

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

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

30 (b) An applicant shall pay all reasonable costs and reasonable investigative
31 fees incurred by the department before the department issues a license.

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

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

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

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

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

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

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

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

1 this section.

2 **Sec. 06.60.050. Decision on application.** (a) Within 30 days after the date the
3 department determines that it has received a complete application under AS 06.60.020
4 or 06.60.025, the required bond if the application is for a mortgage license, and any
5 required fees and investigative costs are received by the department, the department
6 shall either grant or deny the license.

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

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

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

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

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

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

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

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

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

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

1 (B) been convicted, including a conviction based on a plea of
2 guilty, no contest, or nolo contendere, of a felony or a misdemeanor involving
3 fraud, misrepresentation, or dishonesty;

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

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

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

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

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

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

20 **Sec. 06.60.080. Duration of license.** A license issued under this chapter
21 remains in effect for two years after the license is issued unless revoked, suspended,
22 surrendered, or becoming inactive under this chapter.

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

26 (1) a renewal application in the form and manner established by the
27 department;

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

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

31 (4) if the renewal is for an originator license, certificates or other

1 documents that show the continuing education requirements of AS 06.60.160 have
2 been satisfied; and

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

5 (b) A renewal under (a) of this section is considered granted unless, within 30
6 days after the department determines it has received a completed renewal application
7 containing the items in (a) of this section, the department notifies the licensee that the
8 department has denied the renewal application because of the licensee's
9 noncompliance with this title.

10 **Sec. 06.60.090. Inactive license.** (a) A license may become inactive under this
11 section.

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

14 (c) For a license to become inactive, a licensee shall provide the department
15 with a written request that the license become inactive and return the license certificate
16 to the department. The request must include the licensee's name, address, and other
17 information that the department requires to process the request and a statement by the
18 licensee that all mortgage loans of the licensee have been paid in full or sold.

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

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

24 (f) If a license becomes inactive under this section, the license remains
25 inactive until the license expires, the person surrenders the license, or the person who
26 holds the inactive license provides the department with a written request that the
27 license be reactivated. The request must include the information that the department
28 requires to process the request.

29 (g) While a license is inactive under this section, the person holding the
30 inactive license shall pay the biennial license fee as required by AS 06.60.105 and
31 inform the department of any change that occurs in the name and address of the

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

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

7 (i) While a license is inactive under this section, the person is not required to
8 surrender the license under AS 06.60.097(b).

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

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

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

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

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

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

30 (b) A person is eligible for reactivation of an inactive license if the person's
31 license has been in an inactive status for less than 24 months from the anniversary date

1 of the issuance of the initial inactive license certificate. If the person has been in an
2 inactive status for 24 months or longer, the person may obtain a license only by
3 satisfying the qualifications applicable to initial licensure.

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

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

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

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

15 **Article 3. Licensee Obligations.**

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

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

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

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

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

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

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

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

14 **Sec. 06.60.115. Change of place of business.** If a mortgage licensee wishes to
15 change the mortgage licensee's place of business to another location, the mortgage
16 licensee shall submit a written notice to the department at least 10 days before
17 relocating the business. If the mortgage licensee is otherwise in compliance with this
18 chapter, the department shall issue a revised mortgage license to the mortgage licensee
19 that reflects the new location.

20 **Sec. 06.60.120. Transfer of business.** A mortgage licensee may only transfer
21 or assign the licensee's business if

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

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

28 (3) the department determines that the proposed transferee or assignee
29 complies with AS 06.60.060.

30 **Sec. 06.60.130. Change in business control or business operations.** (a) The
31 prior written approval of the department is required for the continued operation of a

1 mortgage licensee's business when a change in control of the mortgage licensee is
2 proposed. The department may require the information it considers necessary to
3 determine whether a new application is required. The mortgage licensee requesting
4 approval of the change in control shall pay all reasonable expenses incurred by the
5 department to investigate and approve or deny the change in control.

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

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

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

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

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

29 (e) If a mortgage licensee conducts business as a mortgage loan servicing
30 agent for mortgage loans that the mortgage licensee owns, or as an agent for other
31 mortgage lenders or investors, the mortgage licensee shall, in addition to complying

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

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

16 **Sec. 06.60.140. Availability of out-of-state records.** A mortgage licensee
17 who operates an office or other place of business outside this state shall, at the request
18 of the department,

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

21 (2) reimburse the department its reasonable costs, as provided in
22 A.S. 06.60.250(f), that are incurred by the department in conjunction with an
23 investigation or examination conducted at the office or place of business.

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

31 (b) A mortgage licensee may not permit a disqualified person to obtain an

1 ownership interest in a mortgage licensee's business without the prior written approval
2 of the department.

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

7 (d) In this section,

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

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

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

12 (B) more than 50 percent, if the mortgage licensee is a
13 corporation with 75 or more shareholders or a limited liability company.

14 **Sec. 06.60.150. Posting of license.** A mortgage licensee shall conspicuously
15 post the mortgage license in each place of business of the mortgage licensee in the
16 state.

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

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

24 **Sec. 06.60.159. Mortgage licensee employm at of, contract with, and**
25 **liability for originator.** (a) A mortgage licensee may not employ, or enter into a
26 contract with a person who acts as an originator for the mortgage licensee unless the
27 person has an originator license.

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

1 **Sec. 06.60.160. Continuing education requirements.** (a) An originator
2 licensee shall complete and submit to the department evidence of at least 24 hours of
3 continuing education for each biennial license period. The originator licensee or
4 mortgage licensee shall submit the evidence when the originator licensee or mortgage
5 licensee submits a license renewal application or an application for reactivation under
6 AS 06.60.095. The 24 hours of continuing education must be in training programs
7 approved by the department.

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

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

17 (d) The department shall publish on a regular basis a listing of training
18 programs that may be used to satisfy the continuing education requirements of this
19 section.

20 **Article 4. Discipline and Investigation.**

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

25 (1) the licensee failed to

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

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

29 (C) satisfy the continuing education requirements, if the
30 licensee is an originator licensee;

31 (D) comply with an applicable provision of this title, with an

1 applicable regulation adopted under this title, with a lawful demand, ruling,
2 order, or requirement of the department, or with another statute or regulation
3 applicable to the conduct of the licensee's business;

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

5 (A) made a material misrepresentation;

6 (B) made a false promise;

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

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

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

12 (F) engaged in conduct of which the department did not have
13 knowledge when the department issued the license, if the conduct demonstrates
14 that the licensee is not fit to engage in the activities for which the licensee was
15 licensed;

16 (G) authorized, directed, planned, or aided in the publishing,
17 distribution, or circulation of a materially false statement or a material
18 misrepresentation concerning the licensee's business or concerning mortgage
19 loans originated in the course of the licensee's business in this or another state;

20 or

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

23 (b) In addition to the bases for disciplinary action under (a) of this section, the
24 department may revoke the license of a licensee who is convicted, including
25 conviction by a plea of not guilty, no contest, or nolo contendere, of a felony or
26 misdemeanor involving fraud, misrepresentation, or dishonesty committed while
27 licensed under this chapter. A person whose license is revoked under this subsection is
28 not qualified to receive a new license until the person provides proof acceptable to the
29 department that the person has been unconditionally discharged from the conviction.
30 In this subsection, "unconditional discharge" has the meaning given in AS 12.55.185.

31 (c) A disciplinary action under this section may be taken by itself or in

1 conjunction with one or more other disciplinary actions under this chapter.

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

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

11 **Sec. 06.60.230. Divestment.** If the department revokes a mortgage license, the
12 mortgage licensee shall divest itself of all outstanding loans that were issued under this
13 chapter by selling or assigning them to another mortgage licensee. Divestment under
14 this section must be approved by the department.

15 **Sec. 06.60.240. Reinstatement of revoked license.** The department may
16 reinstate a revoked license if the licensee complies with this chapter or with a demand,
17 ruling, or requirement made by the department under this chapter. Before
18 reinstatement of a license, the licensee shall pay any fees, restitution, and civil
19 penalties owing under this chapter.

20 **Sec. 06.60.250. Investigation and examination.** (a) The department may
21 investigate and examine the affairs, business premises, and records of a person
22 required to be licensed under this chapter to determine compliance with this chapter,
23 AS 06.01, and applicable regulations adopted under AS 06.01 or this chapter.
24 Notwithstanding AS 06.01.015, the department may conduct an examination every 36
25 months. The department may conduct an examination more often if the examination is
26 part of the review of a complaint or other information received by the department
27 concerning the licensee.

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

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

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

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

5 (c) For the purpose of hearings, investigations, or other proceedings under this
6 chapter and except as otherwise provided in this chapter, the department or an officer
7 designated by the department may administer oaths and affirmations, subpoena
8 witnesses, compel the attendance of witnesses, take evidence, and require the
9 production of books, papers, correspondence, memoranda, agreements, or other
10 documents or records that the department considers relevant or material to the matter.

11 (d) If a person refuses to comply with a subpoena, the superior court, on
12 application by the department, may issue to the person an order requiring the person to
13 appear before the department to produce documentary evidence or to give evidence
14 touching the matter under investigation or in question.

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

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

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

30 **Sec. 06.60.270. Removal by entity.** A mortgage licensee shall remove an
31 originator licensee from acting as an originator for the mortgage licensee if the

1 department directs the mortgage licensee to remove the originator licensee under
2 AS 06.60.260.

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

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

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

13 **Sec. 06.60.330. Compliance with federal requirements.** A person subject to
14 this chapter shall conduct the person's mortgage loan activities in compliance with 12
15 CFR Part 226 and other regulations adopted by the federal government under

16 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
17 1974);

18 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

19 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

20 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
21 Protection Act);

22 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

23 (6) any other federal law or regulation.

24 **Sec. 06.60.340. Prohibited activities.** In addition to activities prohibited
25 elsewhere in this chapter or by law, a person who is a licensee, a person who is
26 required to be licensed under this chapter, and a person who is licensed under
27 AS 06.20 may not misrepresent or conceal material facts or make false promises likely
28 to influence, persuade, or induce an applicant for a mortgage loan or a borrower to
29 enter into a mortgage loan transaction, or, in the course of a mortgage loan transaction,

30 (1) pursue a course of misrepresentation through an agent;

31 (2) improperly refuse to issue a satisfaction of a mortgage loan;

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

5 (4) pay, receive, or collect, in whole or in part, a commission, fee, or
6 other compensation for brokering a mortgage loan in violation of this chapter,
7 including a mortgage loan brokered by an unlicensed person other than an exempt
8 person under AS 06.60.015;

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

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

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

18 (A) consider additional appropriate property information;

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

21 (C) correct errors in the appraisal report;

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

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

30 (B) the person funds the loan at the rate, terms, and costs stated
31 in the good faith estimate provided to the borrower at the time the

1 prequalification letter was issued or the loan commitment was made;

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

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

8 (B) new or changed information from the borrower makes it
9 necessary to change the loan program offered to the borrower;

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

12 (11) engage in unfair, deceptive, or fraudulent mortgage loan practices
13 or advertising.

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

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

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

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

24 (3) the borrower receives cash in excess of the costs and fees of the
25 refinancing;

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

27 (5) the mortgage loan changes from an adjustable rate loan to a fixed
28 rate loan; in a determination under this paragraph, the department may take into
29 account costs and fees;

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

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

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

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

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

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

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

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

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

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

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

13 (b) The remedies provided by this section and by other sections of this chapter
14 are not exclusive and may be applied in combination with other remedies to enforce
15 the provisions of this chapter.

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

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

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

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

31 **Article 7. Originator Surety Fund.**