

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3204

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

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

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

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

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

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

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

26 (b) Every two years, if the department determines that the average balance in
27 the fund during the previous two years was less than \$250,000 or more than \$500,000,
28 the department shall, unless the department waives the adjustment, adjust the fund fee
29 so that the average balance of the fund during the next two years is anticipated to be an
30 amount that is not less than \$250,000 or more than \$500,000. In this subsection,
31 "average balance" means the average balance in the fund after the department deducts

1 anticipated expenditures for claims against the fund and for hearing and legal expenses
2 directly related to fund operations and claims.

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

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

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

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

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

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

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

31 **Sec. 06.60.600. Filing and distribution of claim.** At least 20 days before a

1 hearing is held on the fund claim by the office of administrative hearings
2 (AS 44.64.010), the department shall send a copy of the claim filed with the
3 department to

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

6 (2) the employer of the originator licensee described in (1) of this
7 section; and

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

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

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

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

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

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

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

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

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

30 **Sec. 06.60.630. Department contracts.** When the department receives a fund
31 claim, the department may contract under AS 36.30 (State Procurement Code) with an

1 investigator, an accountant, an attorney, or another person necessary for the
2 department to process the fund claim. A contract may cover more than one fund claim.

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

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

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

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

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

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

27 **Sec. 06.60.690. Fund operations.** The department shall deposit into the fund
28 money that the department recovers from an originator licensee under AS 06.60.745.
29 The department may not consider amounts paid from the fund for hearing or legal
30 expenses when determining the maximum reimbursement to be awarded under
31 AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

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

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

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

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

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

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

27 **Sec. 06.60.720. Order of fund claim payment.** If the money appropriated to
28 the department for payment under AS 06.60.520 - 06.60.750 is insufficient to satisfy
29 an award under AS 06.60.680 for a fund claim, the department shall, when sufficient
30 money has been appropriated to the department for the purpose, satisfy unpaid fund
31 claims in the order the fund claims were originally filed, plus accumulated interest at

1 the rate allowed under AS 45.45.010(a).

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

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

11 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
12 portion of a fund claim against an originator licensee under AS 06.60.680 or
13 06.60.700, the department may recover from the originator licensee, in addition to the
14 payment of the fund claim, the expenses incurred by the department to process and
15 otherwise handle the fund claim.

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

19 **Article 8. Program Administration Fee.**

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

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

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

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

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

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

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

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

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

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

21 **Article 10. Miscellaneous Provisions.**

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

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

29 **Sec. 06.60.900. Applicability of administrative procedures.** The provisions
30 of AS 44.62 (Administrative Procedure Act) apply to an action of the department to
31 deny, revoke, or suspend a license under this chapter, to censure, suspend, or bar a

1 person under AS 06.60.410, to take other disciplinary action under this chapter, to
2 hold hearings, and to issue orders.

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

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

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

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

16 **Article 11. General Provisions.**

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

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

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

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

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

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

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

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

31

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

3 (6) "escrow account" means an account

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

7 (B) held by a third person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (19) "mortgage loan"

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

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

19 (C) does not include loans

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

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

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

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

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

30 (21) "originator"

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

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

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

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

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

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

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

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

(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;

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

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

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

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

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

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

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

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

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

17 (A) child support;

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

21 (C) state or local taxes;

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

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

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

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

31 (3) a creditor may make a levy against exempt property of any kind to

1 enforce the claim of a victim, including a judgment of restitution on behalf of a victim
2 of a crime or a delinquent act, if the claim arises from conduct of the debtor that
3 results in a conviction of a crime or an adjudication of delinquency, except that the
4 debtor is entitled to an exemption in property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOT OFFERED

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR HUGGINS

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

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 21, following "license":

4 Insert "or a registration under AS 06.60.017"

5

6 Page 16, line 22, 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 9, following "licensee":

20 Insert "or small mortgage lender"

21

22 Page 17, line 11, following "license":

23 Insert "or a registration under AS 06.60.017"

24

25 Page 17, line 14, following "license":

26 Insert "or the registration under AS 06.60.017"

27

28 Page 17, lines 15 - 16:

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 19, following "business":

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

4

5 Page 17, line 20, following "business":

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

7

8 Page 17, line 23, following "license":

9 Insert "or the registration under AS 06.60.017"

10

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

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

13

14 Page 17, line 28:

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 29, following "license":

20 Insert "or another registration under AS 06.60.017"

21

22 Page 18, line 13, following "license":

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

24

25 Page 18, line 14, following "licensee":

26 Insert "or the small mortgage lender"

27

28 Page 18, line 15, following "licensee":

29 Insert "or small mortgage lender"

30

31 Page 18, line 17:

1 Delete "of revoked license"

2

3 Page 18, line 18:

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 20:

8 Delete ", the licensee"

9 Insert "or registration under AS 06.60.017, the licensee or small mortgage lender"

10

11 Page 18, line 24, following "chapter":

12 Insert "or a small mortgage lender"

13

14 Page 18, line 29, following "licensee":

15 Insert "or small mortgage lender"

16

17 Page 19, line 2, following "licensee":

18 Insert "or small mortgage lender"

19

20 Page 19, line 3, following "licensee":

21 Insert "or small mortgage lender"

22

23 Page 20, line 12, following "person":

24 Insert ", including a small mortgage lender."

25

26 Page 20, line 17, following the second occurrence of "person":

27 Insert ", including a small mortgage lender."

28

29 Page 20, line 30, following "chapter":

30 Insert "a person who is a small mortgage lender."

31

- 1 Page 22, line 15, following "license,":
2 Insert "registration,"
3
- 4 Page 24, line 4, following "licensee":
5 Insert "or small mortgage lender"
6
- 7 Page 24, line 8, following "person":
8 Insert ", including a small mortgage lender,"
9
- 10 Page 24, line 10, following "licensee":
11 Insert ", person who is a small mortgage lender,"
12
- 13 Page 24, line 14, following "licensee":
14 Insert " or a small mortgage lender"
15
- 16 Page 24, line 17, following "license":
17 Insert "or without being registered under AS 06.60.017"
18
- 19 Page 24, line 19:
20 Delete "Definition of "covered person.""
21 Insert "Definitions for AS 06.60.320 - 06.60.380."
22
- 23 Page 24, line 20, following "06.60.380,":
24 Insert "(1)"
25
- 26 Page 24, line 20, following "licensee":
27 Insert ", a small mortgage lender,"
28
- 29 Page 24, line 21, following "AS 06.20":
30 Insert ";
31 (2) "small mortgage lender" includes a natural person who is an

1 employee of, or working under exclusive contract for, a small mortgage lender"

2

3 Page 24, line 24, following "person":

4 Insert ", including a small mortgage lender,"

5

6 Page 24, line 29, following "months,":

7 Insert "suspend the registration of a small mortgage lender for a period not to exceed
8 12 months,"

9

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

11 Insert "or a small mortgage lender"

12

13 Page 25, line 3, following "licensee":

14 Insert ", to the small mortgage lender,"

15

16 Page 25, line 7, following "license":

17 Insert "or registration as a small mortgage lender"

18

19 Page 25, line 10, following "licensee":

20 Insert "or a small mortgage lender"

21

22 Page 25, line 11:

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

24 Insert "licensee or small mortgage lender is conducting the licensee's or small
25 mortgage lender's business"

26

27 Page 25, line 13, following "licensee":

28 Insert "or a small mortgage lender"

29

30 Page 25, line 14, following "person":

31 Insert ", including a small mortgage lender,"

1

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

3 Insert "or a small mortgage lender"

4

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

6 Insert ", a small mortgage lender,"

7

8 Page 25, line 26, following "licensee":

9 Insert "or small mortgage lender"

10

11 Page 26, following line 3:

12 Insert a new section to read:

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

16

17 Page 33, line 1, following "person":

18 Insert ", including a small mortgage lender"

19

20 Page 33, line 12, following "person":

21 Insert ", including a small mortgage lender,"

22

23 Page 37, line 6, following "purposes":

24 Insert ";

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

26 AS 06.60.017"

SENATE FINANCE
COMMITTEE
Amendment # #2
To Bill Number: HB 162
Sponsor: Huggins
Date 5/11/07 Logged by: Mindy

* Not distributed *

SENATE FINANCE COMMITTEE Replaced

AMENDMENT No. _____

BY Sen Huggins

To: SCS CS HB 162

To: Version "N"

page 24 lines 19 - 21
delete all language

Sec. 06.60.380. Definition of
"covered person."

Also negates change on page 7 line 19
thru
page 8 line 1

of Amendment #1

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS0070\N
Bannister
5/8/07

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

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

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

Chapter 60. Mortgage Lending Regulation Act.

Article 1. Licensing.

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

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

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

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

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

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

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

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

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

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 06.60.320 - 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 51 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 51 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) provide the applicant's written consent to an investigation of the
26 applicant under AS 06.60.030;

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

31 (11) contain other information that the department may require

1 concerning the organization and operations of the applicant and the financial
2 responsibility, background, experience, and activities of the applicant and its directors,
3 officers, members, owners, and other principals.

4 **Sec. 06.60.025. Application for originator license.** An application for an
5 originator license must

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

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 investigative fees incurred by the department
31 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 an additional \$150 fee for each
12 additional 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 may be continuous until the
27 department revokes or otherwise terminates the license.

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

1 provisions of this section.

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

7 (b) If the department denies the license, the department shall promptly notify
8 the applicant. The notification must indicate 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 license;

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

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

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

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

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

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

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

31 (B) been convicted, including a conviction based on a guilty

1 plea or a plea of nolo contendere, of a felony or a misdemeanor involving
2 fraud, misrepresentation, or dishonesty;

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

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

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

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

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

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

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

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

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

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

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

30 (4) if the renewal is for an originator license, certificates or other
31 documents that show that the continuing education requirements of AS 06.60.160 have

1 been satisfied; and

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

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

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

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

13 (c) To make a license inactive, a licensee shall provide the department with a
14 written request that the license be made inactive and return the license certificate to
15 the department. The request must include the licensee's name, address, and other
16 information that the department requires that is necessary for the department to
17 process the request and a statement by the licensee that all mortgage loans of the
18 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 is made inactive under this section, the license remains inactive
25 until the person who holds the inactive license provides the department with a written
26 request that the license be reactivated. The request must include the information that
27 the department requires is necessary to process the request.

28 (g) While a license is inactive, the person holding the inactive license shall
29 pay the biennial license fee as required by AS 06.60.105 and inform the department of
30 any change that occurs in the name and address of the person, the location of the
31 person's business, or in the business operations or control of the person, but the person

1 is not required to maintain the bond required by AS 06.60.045 or to file the annual
2 report required by AS 06.60.100.

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

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

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 has
31 been in an inactive status for less than 24 months from the anniversary date of the

1 issuance of the initial inactive license. If the person has been in an inactive status for
2 24 months or longer, the person may obtain a license only by satisfying the
3 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 was
6 made 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 business
20 was conducted by the mortgage licensee in this state during the preceding calendar
21 year. The mortgage licensee shall make the report under oath or on affirmation. The
22 content 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 (a) of this
24 section is 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 the 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 new mortgage license to the mortgage licensee to
19 reflect the new location.

20 **Sec. 06.60.120. Transfer of business.** (a) Except as provided by (b) of this
21 section, a mortgage licensee may only transfer 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; and

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

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

31 **Sec. 06.60.130. Change in business control or business operations.** (a) The

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

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

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

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

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

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

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

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

8 (d) In this section,

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

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

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

13 (B) 51 percent or more, if the mortgage licensee is a
14 corporation with 75 or more shareholders or a limited liability company.

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

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 employment 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. The 24 hours of continuing education
6 must be in a training program approved by the department.

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

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

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

19 **Article 4. Discipline and Investigation.**

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

25 (1) the licensee has 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 likely to influence, persuade, or
7 induce another person to take action;

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

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

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

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

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

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

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

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AS 12.55.185.

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

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

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

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

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

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

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

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

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

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

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

13 (d) If a person refuses to comply with a subpoena, the superior court, on
14 application by the department, may issue to the person an order requiring the person to
15 appear before the department to produce documentary evidence or to give evidence
16 touching the matter under investigation or in question. Failure to obey the order of the
17 court may be punished by the court as a contempt order.

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

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

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

1 remove the originator licensee from operating as an originator for the person.

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

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

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

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

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

20 (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of
21 1974);

22 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

23 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

24 (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit
25 Protection Act);

26 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

27 (6) any other federal law or regulation.

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

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

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

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

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

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

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

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

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

23 (A) consider additional appropriate property information;

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

26 (C) correct errors in the appraisal report;

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

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

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

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

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

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

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

17 (12) engage in unfair, deceptive, or fraudulent mortgage loan practices
18 or advertising.

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

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

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

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

29 (3) the borrower receives cash in excess of the costs and fees of the
30 refinancing;

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

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

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

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

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

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

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

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

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

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

4 **Sec. 06.60.370. Criminal liability of licensee.** (a) The department may report
5 the violations of (b) - (e) of this section to the attorney general, who may institute the
6 proper proceedings to enforce the criminal penalties provided in (b) - (e) of this
7 section.

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

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

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

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

19 **Sec. 06.60.380. Definition of "covered person."** In AS 06.60.320 -
20 06.60.380, "covered person" means a mortgage licensee or a person who is licensed
21 under AS 06.20.

22 Article 6. Enforcement.

23 **Sec. 06.60.400. Cease and desist orders.** The department may issue, under
24 06.60.400, an order directing a person to cease and desist. The department shall
25 determine the form and content of the order.

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

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

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

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

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

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

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

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

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

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

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

31 (d) In addition to another investigation allowed under this chapter, the

1 department may conduct other examinations, periodic audits, special audits,
2 investigations, and hearings as may be necessary and proper for the efficient
3 administration of this chapter.

4 **Article 7. Originator Surety Fund.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) the employer of the originator licensee alleged to have committed
11 the conduct resulting in the alleged loss; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Sec. 06.60.710. Maximum liability.** (a) Payment of a fund claim may not
23 exceed \$15,000 for each claimant, except that the payment may not exceed a total of
24 \$15,000 for each mortgage loan transaction regardless of the number of persons
25 injured or the number of pieces of residential property involved in the mortgage loan
26 transaction.

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

29 (c) If the \$50,000 liability under (b) of this section is insufficient to pay in full
30 the valid fund claims of all persons who have filed fund claims against one originator
31 licensee, the \$50,000 shall be distributed among the claimants in the ratio that their

1 individual fund claims bear to the aggregate of valid fund claims, or in another manner
2 that the department considers equitable. The department shall distribute the money
3 among the persons entitled to share in the recovery without regard to the order in
4 which their fund claims were filed.

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

11 **Sec. 06.60.730. False claims or documents.** A person who files with the
12 department a notice, statement, or other document required under AS 06.60.500 -
13 06.60.750 that contains a material misstatement of fact is guilty of a class A
14 misdemeanor.

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

20 **Sec. 06.60.745. Reimbursement for expenses.** If the department pays all or a
21 portion of a fund claim against an originator licensee under AS 06.60.680 or
22 06.60.700, the department may recover from the originator licensee, in addition to the
23 payment of the fund claim, the expenses incurred by the department to process and
24 otherwise handle the fund claim.

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

28 **Article 8. Program Administration Fee.**

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

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

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

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

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

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

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

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

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

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

30 **Article 10. Miscellaneous Provisions.**

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

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

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

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

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

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

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

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

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

25 **Article 11. General Provisions.**

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

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

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

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

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

(5) "escrow account" means an account

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

(B) held by a third person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (18) "mortgage loan"

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

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

19 (C) does not include loans

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

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

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

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

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

30 (20) "originator"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) child support;

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

(C) state or local taxes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 TRANSITION: LICENSING OF CURRENT MORTGAGE LENDERS AND

1 MORTGAGE BROKERS. Notwithstanding AS 06.60.010, enacted by sec. 2 of this Act, a
2 person who is engaging in activities for which a license is required under AS 06.60, enacted
3 by sec. 2 of this Act, immediately before the effective date of AS 06.60 is not required to
4 comply with the licensing requirements of AS 06.60 until March 1, 2009. In this section,
5 "license" has the meaning given in AS 06.60.990, enacted by sec. 2 of this Act.

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

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

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

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

SCS CS HB 162 (L&C)

Changes From Version "V" to Version "N"

- Proposed change to page 22, line 5, deletes the language "established by the department in regulation." This change is made to AS 06.60.340 (12), which prohibits a person from engaging in unfair, deceptive, or fraudulent mortgage loan practices or advertising "established by the department in regulation." Requiring that the conduct be established by regulation unnecessarily limits the Department of Commerce, Community, and Economic Development's ability to take disciplinary action against a licensee for conduct that may be new or slightly different from conduct defined in a regulation, but is none-the-less unfair, deceptive, or fraudulent. Eliminating the regulation requirement allows the Department of Commerce, Community, and Economic Development the flexibility to respond to each fact situation as it arises to determine if the conduct is unfair, deceptive, or fraudulent and then take the disciplinary action necessary to protect the public.
- Proposed change to page 30, line 31, deletes the word "wilful" from the sentence. Under AS 06.60.730 as it is currently written, a person who files with the Department of Commerce, Community, and Economic Development a notice, statement, or other document that contains a "wilful" material misstatement of fact is guilty of a class A misdemeanor. The word "wilful" should be deleted because willfulness is not a standard that is used in criminal law in Alaska. The standard that is used instead is "knowing". It is not necessary to insert "knowing" in the place of "wilful" because "knowing" is already implied in the statute.
- Proposed change to page 32, line 17, inserts the language "including an order for the payment of restitution." The bill as it is currently drafted does not contain language that specifically authorizes the Department of Commerce, Community, and Economic Development to order a licensee to pay restitution to a person harmed by a licensee's illegal conduct. Inserting this language would provide the department with that authority.

- Proposed change to page 4, line 22, provides the Department of Commerce, Community, and Economic Development with authority to request that a mortgage license applicant, and any of its directors, officers, members, owners, or other principals provide fingerprints for a criminal justice information and national criminal history record check. It also outlines the procedure to be used to obtain the criminal justice information and criminal history record check.
- Proposed change to page 5, line 2, clarifies that the fingerprints required to be provided by originator license applicants will be used to obtain criminal justice information and national criminal history record check, and it outlines the procedure to be used to obtain that information.
- Proposed change to page 23, lines 22 - 23, deletes the language "In addition to the authority provided in AS 06.60.880," as AS 06.60.880 is proposed to be deleted from the bill.
- Proposed change to page 32, lines 19 - 29, deletes AS 06.60.880. This section is not necessary as the bill contains a provision that allows the Department of Commerce, Community, and Economic Development to report the criminal violations outlined in AS 06.60.370 to the attorney general to institute the proper proceedings to enforce criminal provisions provided in the section.
- Proposed change to page 38, following line 13, adds a "mortgage license or mortgage originator license under AS 06.60" to the list for which the Department of Public Safety may submit fingerprints to the FBI to obtain criminal history record checks for the purpose of evaluating a person's qualifications for licensure.

Proposed Exemption for 06.60.015(a)(3):

HB 162 exempts banks and operating subsidiaries of a bank holding company. It also exempts in Section 06.60.015 an employee of an exempt bank or banking holding company. This exemption is based on the U.S. Supreme Court decision in *Waters v. Wuchovia* which upheld federal preemption of state mortgage laws based on OCC regulations with respect to bank subsidiaries. The *Waters* case noted that state regulatory laws for issues, such as insurance and securities, would apply to a federal bank affiliate.

The main federal banking regulators are the Office of the Comptroller of the Currency (OCC), the U.S. Department of Treasury's Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). In recent years, the OTS has issued a directive that exclusive agents of an OTS regulated bank are exempt from state mortgage laws as well.

In 2004, John E. Bowman, Esq., Chief Counsel for the OTS issued a letter preempting OTS chartered banks from state licensing and registration requirements which interfere and conflict with the authority of the bank to exercise its deposit and lending powers by limiting the federal savings bank's ability to market its products and services in the manner it chooses.

This OTS preemption has been upheld by the courts, and the Division of Banking and Securities does not intend to apply HB 162 to any federally preempt bank.

A 2006 U.S. District Court case from Connecticut regarding State Farm is instructive. In that matter, the United States District Court for Connecticut permanently enjoined the Banking Commissioner of the State of Connecticut from regulating the mortgage lending of State Farm Bank, or any exclusive agents of State Farm Bank. *State Farm Bank, F.S.B. v. Burke*, 2006 WL 1728919 (D. Conn. June 21, 2006). The court determined that the commissioner could not require that exclusive agents of State Farm Bank be licensed by the State of Connecticut regarding the sale of mortgage products. The district court agreed with the OTS regarding the preemptive effect of the agency's regulations.

State Farm had originally believed that the exemption language in HB 162 Version "V" was sufficient to track OTS preemption and had not requested a change in the bill. However, on May 4, 2007 State Farm indicated that it would prefer to preempt explicitly exclusive agents as well as bank employees in subsection (a)(3) of Section 06.60.015. Therefore, the division has added language to subsection (a)(3) to effect this clarification. This exemption applies to a federal bank's the exclusive agents which have been exempted from mortgage licensing by a federal agency.

Alaska State Legislature

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Economic Development, Trade & Tourism
Committee

Member
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Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative Bob Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

Sponsor Statement

CSHB 162 (L&C)

Alaska is the last state not to license and regulate residential mortgage lending. As a result, the Alaska Division of Banking and Securities has no authority to investigate the more than 20 complaints and over 50 phone calls it receives weekly about questionable lending practices. As it is, the division lacks regulatory authority to protect Alaska consumers from fraud, questionable lending, or mortgage brokering practices. While the state can sue to stop questionable practices in court, a regulatory framework creates a level playing field that benefits all industry participants and consumers.

Increased access to internet lending in recent years has contributed even further to a growing number of complaints and has caused the U.S. Congress to seek ways to strengthen consumer protection in the largest single investment most people will make in their entire lifetime.

Recognizing this problem, Alaska Mortgage Bankers Association and the Alaska Association of Mortgage Brokers has been working with the Alaska Division of Banking and Securities to develop legislation to balance protection of Alaska's consumers while insuring sufficient access.

During the past two years the Alaska Division of Banking and Securities has worked closely with leading Alaska mortgage lending groups to develop this legislation. The regulating of Alaska's mortgage lending industry is supported by the Alaska Division of Banking and Securities, the Alaska Mortgage Bankers Association, the Alaska Mortgage Brokers Association, the Independent Lenders of Alaska, the Alaska Realtors Association, and Alaska Housing Finance Corporation (AHFC). In addition, The American Association of Retired Peoples (AARP) has stated they are pleased with the legislation.

CSHB 162 will grant the Division of Banking enough licensing and regulatory authority to begin addressing the growing number of complaints from Alaska's homebuyers.

This legislation is a good first step toward addressing some of the issues faced by Alaska's mortgage consumers. This effort to establish accountability in the mortgage lending industry in Alaska is vital and past due. Your support of this legislation is respectfully requested.

Sectional Analysis CSHB 162 Mortgage Lending -Version V

Prepared on: April 17, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) be in writing;

(2) be signed by the applicant and notarized;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) the applicant has complied with the requirements of this chapter for obtaining the license;
- (2) the financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's directors, officers, members, owners, and other principals, and the organization and operation of the applicant indicate that the business will be operated efficiently and fairly, in the public interest, and under the law; and
- (3) the department has not found grounds for denial of a license under AS 06.60.065.

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

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

- (1) complied with the requirements of this chapter and paid all fees for obtaining the originator license;
- (2) not been enjoined by a court of competent jurisdiction from engaging in an aspect of the business of providing financial services to the public; and
- (3) not, within the previous seven years,
 - (A) been prohibited by a federal or state regulatory agency from engaging in, participating in, or controlling a finance-related activity that involves providing financial services to the public;
 - (B) been convicted, including a conviction based on a guilty plea or a plea of nolo contendere, of a felony or a misdemeanor involving fraud, misrepresentation, or dishonesty;
 - (C) committed an act, made an omission, or engaged in a practice that constitutes a breach of a fiduciary duty;
 - (D) made a false material statement of an application submitted under this chapter; or
 - (E) violated a provision of this chapter, a regulation adopted under this chapter, or an order of the department under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 3. Licensee Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Discipline and Investigation.

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

(1) the licensee has failed to

(A) make a payment required by this chapter;

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

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

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

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

(A) made a material misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If a person refuses to comply with a subpoena, the superior court, on application by the department, may issue to the person an order requiring the person to appear before the department to produce documentary evidence or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt order.

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

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

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

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

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

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

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

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

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

Article 5. Business Duties and Restrictions.

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

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

Sec. 06.60.330. Compliance with federal requirements. If the regulations apply to the person under federal law, a person shall conduct the person's mortgage loan activities in compliance with 12 CFR Part 226 and other regulations adopted by the federal government under (1) 12 U.S.C. 2601 - 2617 (Real Estate Settlement Procedures Act of 1974); (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975); (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977); (4) 15 U.S.C. 1601 - 1666j and 1671 - 1693r (Consumer Credit Protection Act); (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and (6) any other federal law or regulation.

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

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

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

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