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HOUSE

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**HB 162 Mortgage Lending**

Comparison between Version K and Version O

Prepared: April 16, 2007

**Page 3 Line 4 Section 06.60.015**

Add new subsection (3) renumber remaining subsections.

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

**Page 4 Line 4 Section 06.60.020**

Add and amend (4) as follows:

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

**Page 4 Line 7 Section 06.60.020**

Amend (5) to read as follows:

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

**Page 4, Line 2 Section 06.60.020**

Amend (6) to read as follows:

“(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 ~~10 percent or more of the total shares;~~

**(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;**

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**Page 4 Line 14 Section 06.60.020**

Amend (7) to read as follows:

(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 own more than 51 percent of the limited liability company;**

**Page 5 Line 19 Section 06.60.035**

Add new section (c)

**(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.**

**Page 5 Line 24 Section 06.60.040**

Amend (a) to read:

(a) A person who applies for an originator license shall pass a competency test conducted and graded by the department. ~~In cooperation with the education committee established under AS 06.60.160(b), the~~ **The** department shall establish the scope and content of the test by regulation.

Delete (b) and re-letter (c) to (b)

**Page 6 Line 20 Section 06.60.050**

Delete this entire section and readopt as follows:

**Sec. 06.60.050. Issuance of license.**

**(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.**

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**Page 6 Line 24 Sec 06.60.055**

Delete this entire section.

**Page 7 Line 8 Section 06.60.065**

Delete entire section and readopt as follows:

**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.**

Page 7 Line 24 after the word "chapter", DELETE "." and INSERT  , and then ADD: **regulation adopted under this chapter, or an order of the department under this chapter.**

Page 8 Line 7 after the word "licensee" DELETE "shall" and INSERT  may

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**Page 8 Line 9 Section 06.60.085**

Amend (a) to read as follows:

(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** ~~Unless the department denies the renewal under (b) of this section, a licensee may renew a license by submitting to the department~~

**Page 8 Line 20 Section 06.60.085**

Amend (a)(5) as follows:

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

**Page 8 Line 22 Section 06.60.085**

(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** ~~receives the items in (a) of this section~~ ~~renewal application~~, the department notifies the licensee that the department has denied the renewal application **due to licensee's noncompliance with this chapter or other sections of law.** ~~because the licensee is not complying with this chapter.~~

**Page 10 Line 6 Section 06.60.090**

Amend (m) as follows:

(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** and the services if were performed while the licensee was actively licensed.

**Page 10 Line 14 Section 06.60.095**

Amend (a) to read:

"...under as 06.60.090 may ~~reactivate the license by applying~~ apply to the department for an active license and **pay** ~~paying~~ the required fees."

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**Page 10 Line 22 Section 06.60.095**

Amend (c) to read follows:

(c) The department ~~shall~~ **may** issue an active license that has been converted from inactive status under this section for **the term remaining on the license before it was made inactive status.** ~~remainder of the current 24 month period of the inactive license.~~

**Page 11 Line 7 Section 06.60.100**

Amend (a) to read:

(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 the state~~ where business was conducted by the mortgage licensee in ~~the~~ **this** state during the preceding calendar year. The mortgage licensee shall make the report under oath or on affirmation. The report must be in the form established by the department.

**Page 11 Line 16 Section 06.60.105**

Amend (b) to read:

(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.**

**Page 12 Line 9 Section 06.60.120**

Amend (a)(1) and (2) and add new (3) as follows:

(1) **An application is made to the department to** ~~the transfer is made to another mortgage licensee with the same type of mortgage license as the transferring or assigning mortgage licensee; and~~

(2) ~~the mortgage licensee provides~~ **the department determines that is has received a complete application** ~~has been made with written notice~~ at least 30 days before the effective date of the proposed transfer or assignment.

(3) **the department determines that transfer complies with AS 06.60.060.**

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**Page 12 Line 18 Section 06.60.130.**

Correct the section title as follows:

Sec 06.60.130. Change in business control or **business** operations.

**Page 13 Line 1-27 Section 06.60.135.**

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

(c) A mortgage licensee shall maintain a record, by electronic record or photocopying, for the account of each borrower and for each loan made to the borrower **or application for a mortgage loan that is related to the purchase of real estate, or refinancing of 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.** ~~25 months.~~

(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 law, 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.

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**Page 14 Line 18-31 and Page 14 Line 1-6, Sec 06.60.145**

Delete and adopt new language:

- (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.

**Page 15 Line 7 Insert New Section:**

**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.

**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.

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**Page 15 Line 31 Section 06.60.160**

Add (c) and Amend (d)

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

~~(e-d) The education committee established under (b) of this section~~ **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.

Page 16 Line 5 after the word "license" INSERT **or take other disciplinary actions against a mortgage licensee or originator, singly, or in combination as well as any other action that is or may be authorized under AS.06.01 of this chapter or as set forth in regulation under this chapter,**

**Page 16 Line 10 Section 06.60.200**

Amend (a)(2)

(2) the licensee has, with respect to a mortgage loan transaction,  
(A) made a substantial **material** misrepresentation;

**Page 16 Line 23 Section 06.60.200**

Amend (2)(G) as follows:

(G) ~~knowingly~~ 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

Page 17 Lines 10, 11 and 12

DELETE all language after the word "until," through line 12.

INSERT: **the person has provided proof acceptable to the department of unconditional discharge from their conviction.**

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**Page 17 Line 11 Section 06.60.200**

Amend (b) as follows and add new section (c):

(b) In addition to the bases for revocation 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 a **misdemeanor** ~~another crime~~ 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 seven years have elapsed since the person completed the sentence imposed for the conviction, or, if a sentence was not imposed or was suspended, until seven years have elapsed from the conviction.

**(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.**

**Page 17 Line 25 Section 06.60.210**

Amend (b) as follows:

(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.

Page 17 Line 29 after the word "fees"

INSERT: **restitution,**

Page 18 Line 6 after the word "complaint"

ADD: **or other information received by the department**

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**Page 18 Line 7 Section 06.60.240**

Amend the section as follows:

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 ~~the biennial license fee~~ **any fees owing under this chapter.** ~~required under AS 06.60.145.~~

**Page 18 Line 19 Section 06.60.250**

Amend the section as follows:

(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;**

**Page 18 Line 25 Section 06.60.250**

Add the following sections and amend label of section (c) to (f):

(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.

**Page 19 Line 12 Section 06.60.260**

Change title of section to:

**Revocation**, removal or suspension of originator license.

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**Page 19 Line 14 Section 06.60.260**

Amend as follows:

“...incompetent when operating as an originator, or ~~refuses~~ **fails** to comply with the law, rules of the department, or written requirements or instructions of the department relating to the originator license, the department may **revoke**, remove, or suspend the originator licensee from...”

**Page 19 Line 20 Section 06.60.270**

Amend to read as follows:

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

**Page 19 Line 25 Section 06.60.280**

Amend as follows:

“...public a list of all licensees who have been ~~prosecuted~~ **censured**, barred, or had their licenses...”

**Page 20 Line 5 Section 06.60.330**

Amend as follows:

“...loan activities ~~under~~ **in compliance with** 12 CFR Part 226 and other regulations adopted by the federal...”

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**Page 21 Line 2 Section 06.60.340**

Amend by adding (11) and (12) and deleting (b)

**(11) represent that the person has a license, title, certification, sponsorship, approval, status, affiliation or connection that the person does not have;**  
**(12) engage in unfair, deceptive, or fraudulent mortgage loan practices or advertising established by the department in regulation.**

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

**Page 22 Line 7 Section 06.60.360**

Amend section (a) as follows:

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

Page 23 Line 8 after the word "government"

ADD: **and its deposits are insured by a federal agency. Monies maintained in the escrow account shall be exempt from execution, attachment, or garnishment.**

Page 23 Line 12

DELETE: penalties

ADD: **violations**

Page 23 starting Line 14

After the words "guilty of a" INSERT **Class A** and then ADD a , after misdemeanor

DELETE: the rest of line 14, 15 and 16.

Page 23 Line 18 after the word "deposits,"

ADD: **funds or checks or other form of negotiable instruments**

DELETE: **checks, drafts, or mortgages**

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Page 23 starting Line 19

After the words "guilty of a" INSERT **Class A** and then ADD a , after misdemeanor

DELETE: the rest of line 19, 20 and 21.

**Page 23 Line 22 Add New Section**

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

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

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

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

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

Page 23 starting Line 28

INSERT before the word misdemeanor **Class A** and then ADD a , after misdemeanor

DELETE: the rest of line 28, 29 and 30.

**Page 24 Line 6 Add new section**

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

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**Page 24 Line 14 Section 06.60.400**

Amend to read as follows:

“...AS 06.01.030, an order directing a person to cease and desist ~~from engaging in an unsafe or unsound practice...~~”

Page 26 Line 25 DELETE “seeking” ADD may seek

Page 26 Line 27 after the word “licensee” INSERT and

**Page 27 Line 24 Section 06.60.600**

Amend to read as follows:

“...hearings (AS 44.64.010), ~~a person making a fund claim~~ the department shall send...”

**Page 29 Line 19 Section 06.60.690**

Amend to read as follows

The department may charge fund operation hearing and legal expenses from money appropriated to the department for the purpose.  
~~from money appropriated to the department for the purpose the hearing and legal expenses related to fund and fund claim operations and fund claims.~~

**Page 33 Line 10 Section 06.60.900**

Amend to read as follows:

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

A person may not, in a document filed with the department or in a examination, investigation, hearing, or other proceeding...”

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Page 34 Line 1 after the word "money" INSERT **, in accordance with a written agreement,**

**Page 34 Line 7 Section 06.60.990**

Amend to (5)(B) read as follows:

(B) held by a **third party** ~~person other than the borrower on a mortgage loan;~~ and

**Page 36 Line 1 Add New adopting section**

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

**(52) violating AS 06.60.010 – 06.60.360 (mortgage lending regulation act);"**

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**Sectional Analysis HB 162 Mortgage Lending -Version O**

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 license by obtaining a copy of their license.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 3. Licensee Obligations.**

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

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

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

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

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

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

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

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

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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 originator's 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ANALYSIS: Provides definition for this article of the chapter.**

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**Article 6. Enforcement.**

**Sec. 06.60.400. Cease and desist orders.** The department may issue, under AS 06.01.03C, an order directing a person to cease and desist. The department shall determine the form and content of the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 7. Originator Surety Fund.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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may elect to defend the fund claim as a small claims action in district court under District Court Rules of Civil Procedure if the claim does not exceed the small claims jurisdictional limit.

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

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

**ANALYSIS: This provides the consumer an additional venue to have their claim adjudicated. The claim can be heard before a hearing officer, or magistrate.**

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

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

(1) department makes an award to the claimant;

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

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

**ANALYSIS: This section is intended to cover the department's costs and also discourages frivolous claims. If a claim is proven to be valid, the money the claimant paid is refunded to them.**

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

**ANALYSIS: The department from time-to-time may require the assistance of industry experts to prove a portion of any enforcement action. This section allows the department to hire those individuals.**

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

**ANALYSIS: This section allows a licensee to file a response for any complaint filed against them.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 8. Program Administration Fee.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 10. Miscellaneous Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Article 11. General Provisions.**

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

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

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(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "mortgage loan"

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

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

(C) does not include loans

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

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

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

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

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

(20) "originator"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) state or local taxes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Bannister  
4/14/07

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

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE LYNN**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

5 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **Article 3. Licensee Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 first.

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

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

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

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

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

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

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

26 (d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) the licensee has failed to

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

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

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

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

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

23 (A) made a material misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (6) any other federal law or regulation.

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

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

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

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

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

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

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

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

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

10 (A) consider additional appropriate property information;

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

13 (C) correct errors in the appraisal report;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **Article 6. Enforcement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 18                   (1) department makes an award to the claimant;  
19                   (2) fund claim is dismissed under AS 06.60.610; or  
20                   (3) fund claim is withdrawn by the claimant before the office of  
21 administrative hearings (AS 44.64.010) holds a hearing on the fund claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Article 10. Miscellaneous Provisions.**

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

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

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

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

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

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

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

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

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

25 **Article 11. General Provisions.**

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

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

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

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

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

3 (5) "escrow account" means an account

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

7 (B) held by a third person; and

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

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

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

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

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

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

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

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

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

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

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