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Source

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Chapter No.

AN ACT

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

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

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

7

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, **a**

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

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

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

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

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

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

12 **Article 1. Licensing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) the person has not

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

4 (B) within the previous seven years,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (j) In this section,

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

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

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

14 (1) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) be in writing;

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

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

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

20 (5) include a complete set of fingerprints of the applicant to obtain a
21 report of criminal justice information and a national criminal history record check; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 license becomes inactive under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Article 3. Licensee Obligations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 department at a location within this state; or

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

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

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

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

19 (d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Article 4. Discipline and Investigation.**

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

7 (1) the licensee failed to

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

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

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

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

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

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

21 (A) made a material misrepresentation;

22 (B) made a false promise;

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

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

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

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

1 or small mortgage lender was registered;

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

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

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

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

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

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

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

6 **Sec. 06.60.240. Reinstatement.** The department may reinstate a revoked
7 license or registration under AS 06.60.017 if the licensee or small mortgage lender
8 complies with this chapter or with a demand, ruling, or requirement made by the
9 department under this chapter. Before reinstatement of a license or registration under
10 AS 06.60.017, the licensee or small mortgage lender shall pay any fees, restitution,
11 and civil penalties owing under this chapter.

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

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

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

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

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

29 (c) For the purpose of hearings, investigations, or other proceedings under this
30 chapter and except as otherwise provided in this chapter, the department or an officer
31 designated by the department may administer oaths and affirmations, subpoena

1 witnesses, compel the attendance of witnesses, take evidence, and require the
2 production of books, papers, correspondence, memoranda, agreements, or other
3 documents or records that the department considers relevant or material to the matter.

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

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

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

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

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

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

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

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

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

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

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

13 (2) 12 U.S.C. 2801 - 2810 (Home Mortgage Disclosure Act of 1975);

14 (3) 12 U.S.C. 2901 - 2908 (Community Reinvestment Act of 1977);

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

17 (5) 42 U.S.C. 3601 - 3631 (Fair Housing Act of 1968); and

18 (6) any other federal law or regulation.

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

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

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

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

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

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

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

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

14 (A) consider additional appropriate property information;

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

17 (C) correct errors in the appraisal report;

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

25 (9) 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 (10) represent that the person has a license, registration, title,
3 certification, sponsorship, approval, status, affiliation, or connection that the person
4 does not have;

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 06.60.360. Escrow accounts.** (a) A covered person and a borrower may
30 agree that the covered person will keep in an escrow account all money that the
31 borrower is required to pay to defray future taxes or insurance premiums or for other

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

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

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

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

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

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

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

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

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

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

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

14 **Article 6. Enforcement.**

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

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

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

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

28 (3) the violation has caused material damage to the licensee, to the
29 small mortgage lender, or to the public.

30 (b) When a person who is the subject of a proposed order under this section
31 receives a notice of the department's intention to issue an order under this section, the

1 person is immediately prohibited from engaging in any activities for which a license or
2 registration as a small mortgage lender is required under this chapter.

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

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

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

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

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

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

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

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

1 contract for a small mortgage lender.

2 **Article 7. Originator Surety Fund.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 06.60.590. Claim hearing.** Except as otherwise provided by
31 AS 06.60.610, a hearing on a fund claim shall be handled by the office of

1 administrative hearings (AS 44.64.010).

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

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

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

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

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

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

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

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

27 (b) The department shall refund the filing fee required under this section if the
28 (1) department makes an award to the claimant;
29 (2) fund claim is dismissed under AS 06.60.610; or
30 (3) fund claim is withdrawn by the claimant before the office of
31 administrative hearings (AS 44.64.010) holds a hearing on the fund claim.

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

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

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

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

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

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

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

29 **Sec. 06.60.690. Fund operations.** The department shall deposit into the fund
30 money that the department recovers from an originator licensee under AS 06.60.745.
31 The department may not consider amounts paid from the fund for hearing or legal

1 expenses when determining the maximum reimbursement to be awarded under
2 AS 06.60.710 or the maximum liability for fund claims under AS 06.60.710.

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

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

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

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

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

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

29 **Sec. 06.60.720. Order of fund claim payment.** If the money appropriated to
30 the department for payment under AS 06.60.520 - 06.60.750 is insufficient to satisfy
31 an award under AS 06.60.680 for a fund claim, the department shall, when sufficient

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

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

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

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

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

21 **Article 8. Program Administration Fee.**

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

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

31 (c) If there are multiple mortgage loan instruments recorded for a single

1 mortgage loan transaction, the department shall collect only one program
2 administration fee.

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

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

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

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

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

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

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

23 **Article 10. Miscellaneous Provisions.**

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

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

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

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

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

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

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

19 **Article 11. General Provisions.**

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

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

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

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

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

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

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

31 or

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

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

5 (6) "escrow account" means an account

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

9 (B) held by a third person; and

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

14 (7) "fund" means the originator surety fund established by
15 AS 06.60.500;

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

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

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

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

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

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

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

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

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

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

8 (16) "mortgage lender licensee" means a person who holds a mortgage
9 lender license;

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

12 (18) "mortgage licensee" means a mortgage lender licensee or a
13 mortgage broker licensee;

14 (19) "mortgage loan"

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

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

21 (C) does not include loans

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

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

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

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

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

1 (21) "originator"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) child support;

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

25 (C) state or local taxes;

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

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

31 (B) labor or materials furnished to make, repair, improve,

1 preserve, store, or transport the property; and

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

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

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

11 (i) household goods and wearing apparel reasonably
12 necessary for one household;

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

15 (iii) family portraits and heirlooms of particular
16 sentimental value to the debtor; and

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

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

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

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

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

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

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

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

29 (52) violating AS 06.60.010 - 06.60.380 (mortgage lending
30 regulation).

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

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

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

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

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

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

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

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