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**A BILL FOR AN ACT**

RELATING TO MORTGAGE BROKERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4                                   **"CHAPTER**

5   **MORTGAGE BROKERS**

6           **§ -1 Definitions.** In this chapter, unless the context  
7 or subject matter otherwise requires:

8           "Applicant" means a person applying for a mortgage broker  
9 license.

10          "Commissioner" means the commissioner of financial  
11 institutions of this State.

12          "Employee" means an individual engaged in the service of a  
13 licensed mortgage broker for compensation or gain. An employee  
14 is subject to withholding, the Federal Income Contribution Act,  
15 and other lawful deductions by the licensed mortgage broker as a  
16 condition of employment and is subject to the right of the  
17 licensed mortgage broker to direct and control the actions of  
18 the employee.

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1 "Institutional investor" means (1) banks, savings and loan  
2 institutions, savings banks, trust companies, insurance  
3 companies, investment companies as defined in the Investment  
4 Company Act of 1940, pension or profit sharing trusts, any of  
5 the classes of persons permitted to qualify as foreign lenders  
6 under section 207-11, or other financial institutions or  
7 institutional buyers, whether acting for themselves or as  
8 fiduciaries; and (2) the United States or any foreign  
9 government, or any agency or corporate or other instrumentality  
10 of the United States, a foreign government, or political  
11 subdivision thereof.

12 "License" means a license issued under this chapter.

13 "Licensee" means a person licensed under this chapter.

14 "Mortgage broker" means a person not exempt under section

15 -2 who for compensation or gain, or in the expectation of  
16 compensation or gain, either directly or indirectly makes,  
17 negotiates, acquires, or offers to make, negotiate, or acquire a  
18 residential mortgage loan on behalf of a borrower seeking a  
19 residential mortgage loan.

20 "Person" means an individual, partnership, corporation,  
21 association, or other organization.

1 "Residential mortgage loan" means a first mortgage loan on  
2 residential real property that will be used primarily for  
3 personal, family, or household use and primarily secured by a  
4 security interest on such residential real property.

5 **§ -2 Exemptions.** This chapter shall not apply to the  
6 following:

7 (1) Banks, trust companies, savings and loan institutions,  
8 savings banks, pension trusts, credit unions,  
9 insurance companies, financial services loan  
10 companies, or federally licensed small business  
11 investment companies, authorized under any law of this  
12 State or of the United States to do business in this  
13 State;

14 (2) A person making or acquiring a residential mortgage  
15 loan with one's own funds for one's own investment  
16 without intent to resell the residential mortgage  
17 loan;

18 (3) A person licensed to practice law in this State, not  
19 actively and principally engaged in the business of  
20 negotiating residential mortgage loans, when the  
21 person renders services in the course of the person's  
22 practice as an attorney;

- 1 (4) A person licensed as a real estate broker or  
2 salesperson in this State, not actively and  
3 principally engaged in the business of negotiating  
4 residential mortgage loans, when the person renders  
5 services in the course of the person's practice as a  
6 real estate broker or salesperson;
- 7 (5) An institutional investor negotiating, entering into,  
8 or performing under a residential mortgage loan  
9 purchase agreement for its portfolio, for subsequent  
10 resale to other institutional investors, or for  
11 placement of the residential mortgage loans into pools  
12 or packaging them into mortgage-backed securities. As  
13 used in this paragraph, "loan purchase agreement"  
14 means an agreement or arrangement under which a bank,  
15 savings and loan institution, credit union, financial  
16 services loan company, or other financial institution  
17 authorized to do business in this State agrees to sell  
18 residential mortgage loans or obtain funding therefor,  
19 with or without the transfer of servicing rights, to  
20 an institutional investor; and
- 21 (6) A foreign lender conducting business in accordance  
22 with part II of chapter 207.

1           **§ -3 Prohibited acts.** (a) No person required to be  
2 licensed under this chapter shall act, attempt to act, or hold  
3 oneself out as a mortgage broker without a license as required  
4 in this chapter. No person required to be licensed under this  
5 chapter who acts, attempts to act, or holds oneself out as a  
6 mortgage broker without a license shall charge or receive any  
7 commission, fee, bonus, salary, hourly wage, remuneration,  
8 compensation, or gain in connection with arranging for,  
9 negotiating, or selling a residential mortgage loan.

10           (b) It shall also be unlawful for any person required to  
11 be licensed under this chapter to:

12           (1) Provide or offer to provide any service requiring a  
13 license pursuant to this chapter unless the person has  
14 been issued the appropriate license or is exempt from  
15 licensing;

16           (2) Disburse the residential mortgage loan proceeds to a  
17 closing agent in any form other than, as applicable,  
18 direct deposit to a customer's account, wire, bank or  
19 certified check, attorney's check drawn on a trust  
20 account, or such other form as specifically authorized  
21 by applicable law;

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- 1 (3) Disburse the proceeds of a residential mortgage loan  
2 without sufficient collected funds on hand at the time  
3 of the disbursement in the account upon which the  
4 funds are drawn;
- 5 (4) Fail to disburse funds in accordance with a  
6 residential mortgage loan commitment to make a  
7 residential mortgage loan that has been accepted by  
8 the borrower;
- 9 (5) Accept any fees at closing which were not disclosed as  
10 required by law;
- 11 (6) Retain third party fees at closing in excess of the  
12 actual cost of third party services;
- 13 (7) Require the borrower to be represented by a third  
14 party service provider except under the terms  
15 permitted by applicable federal law;
- 16 (8) Use any agreement or instrument in which blanks are  
17 left to be filled in after execution;
- 18 (9) Participate in any exclusive dealing or exclusive  
19 agency agreement with any borrower;
- 20 (10) Delay closing of any residential mortgage loan for the  
21 purpose of increasing interest, costs, fees, or  
22 charges payable by the borrower;

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- 1 (11) Engage in unfair, deceptive, or fraudulent residential  
2 mortgage loan practices;
- 3 (12) Make payment of any kind, whether directly or  
4 indirectly, to any appraiser for the purpose of  
5 influencing the independent judgment of the appraiser  
6 with respect to the value of any real estate which is  
7 to be covered by a residential mortgage loan;
- 8 (13) Knowingly make to the borrower any misrepresentation  
9 or false promise likely to influence, persuade, or  
10 induce, or pursue a course of misrepresentation or  
11 false promises, through officers, directors,  
12 independent contractors, employees, partners, agents,  
13 and members, or through advertising, or otherwise;
- 14 (14) Knowingly misrepresent, circumvent, or conceal,  
15 through any subterfuge or device, any of the material  
16 facts or terms of a residential mortgage loan;
- 17 (15) Record a residential mortgage brokerage agreement or  
18 similar document without a judgment issued by a court  
19 of competent jurisdiction; or
- 20 (16) Make any untrue statement of a material fact in any  
21 document filed with the commissioner under this  
22 chapter or rules adopted thereunder, or to omit any

1 material fact that is required to be stated in any  
2 document.

3 § -4 **Licensing requirements, scope of license.** (a) No  
4 mortgage broker license shall be granted to any individual who  
5 is not eighteen years of age or older. If the applicant is a  
6 person other than an individual, no license shall be granted  
7 unless the applicant first registers to do business in this  
8 State with the business registration division of the department  
9 of commerce and consumer affairs.

10 If the applicant is an individual, the license entitles all  
11 employees of the licensed mortgage broker to engage in the  
12 mortgage broker business.

13 (b) If the applicant is a person other than an individual,  
14 the license issued to it entitles all officers, directors,  
15 employees, partners, and members of the licensed corporation,  
16 partnership, association, or other organization to engage in the  
17 business of mortgage brokering if one officer, director,  
18 employee, partner, or member is designated in the license as the  
19 individual responsible for the person licensed under this  
20 section. The mortgage broker shall be responsible for informing  
21 the commissioner, in writing, of any change in the designation  
22 of the responsible officer, director, employee, partner, or



1 member of a mortgage broker or of changes in the licensed  
2 mortgage broker in charge of a branch office.

3       **§ -5 Application, renewal.** (a) Each application for  
4 and renewal of a license shall be made in writing on the forms  
5 and in the manner prescribed by the commissioner. In order to  
6 obtain and renew a license, the applicant must satisfy the  
7 following requirements:

8           (1) The applicant must have paid the fees as required by  
9           law;

10          (2) The applicant must have complied with section -7;

11          (3) The applicant, or in the case of an applicant that is  
12           not an individual, any of its officers, directors,  
13           employees, partners, or members, shall not have had a  
14           license issued under this chapter or any similar state  
15           statute suspended or revoked within five years of the  
16           filing of the present application;

17          (4) The applicant, or in the case of an applicant that is  
18           not an individual, any of its officers, directors,  
19           employees, partners, or members shall not have been  
20           convicted of a misdemeanor involving dishonesty or  
21           financial misconduct or a felony within seven years of  
22           the filing of the present application as determined in

1 a criminal background investigation which the  
2 commissioner may request in accordance with section  
3 846-2.7;

4 (5) The applicant, or in the case of an applicant that is  
5 not an individual, the designated officer, director,  
6 employee, partner, or member shall have at least two  
7 years of experience in financial transactions  
8 involving primary or subordinate residential mortgage  
9 loan financing as: (A) a mortgage broker; (B) a  
10 mortgage banker or responsible individual of a  
11 mortgage banking business; (C) a loan officer with  
12 responsibility primarily for loans secured by a lien  
13 on real estate; (D) a branch manager of a lender with  
14 responsibility primarily for loans secured by a lien  
15 on real estate; or (E) a mortgage broker with a  
16 mortgage broker or similar license from another state  
17 with licensing standards substantially similar to  
18 those in this State, as determined by the  
19 commissioner; and

20 (6) The applicant, or in the case of an applicant that is  
21 not an individual, its designated officer, director,  
22 employee, partner, or member shall have passed a

1 written examination, the content of which shall be  
2 established by the commissioner.

3 (b) For the purposes of subsection (a), the commissioner  
4 shall permit the substitution of two years of experience as a  
5 licensed insurance producer under chapter 431 in place of the  
6 experience requirements set forth herein, provided that:

7 (1) The licensed insurance producer only arranges mortgage  
8 loans with one insured depository institution, as  
9 defined in 12 U.S.C. section 1813(c)(2), that is a  
10 wholly owned subsidiary of an insurer, or an affiliate  
11 of an insurer with which such insurance producer has  
12 an exclusive insurance agency relationship;

13 (2) The licensed insurance producer and the insured  
14 depository institution shall certify that the  
15 insurance producer only arranges mortgage loans with  
16 the insured depository institution and no other; and

17 (3) The license shall be terminated as of the date the  
18 insurance producer ceases to exclusively arrange  
19 mortgage loans with the insured depository  
20 institution.

21 (c) If the commissioner finds that any one of these  
22 conditions has not been met, the commissioner shall not issue or

1 renew the license. In the event the commissioner orders denial  
2 of issuance or of renewal of a license, the order shall be made  
3 only pursuant to chapter 91.

4 (d) Each license must be renewed biennially and the  
5 renewal application shall be made on a form and in the manner  
6 prescribed by the commissioner.

7 **§ -6 Inspection of license, principal place of**  
8 **business, branch office, change of address.** (a) Upon request,  
9 the licensed mortgage broker or designated officer, director,  
10 employee, partner, or member shall make available for inspection  
11 the mortgage broker's license.

12 (b) Every licensed mortgage broker shall have and maintain  
13 a principal place of business in this State for the transaction  
14 of business. In the event the licensed mortgage broker  
15 maintains a branch office, the commissioner, upon application  
16 and payment of a fee by the licensed mortgage broker, shall  
17 issue a license for each branch office. The licensee shall  
18 designate a licensed mortgage broker to be in charge of each  
19 branch office.

20 (c) In the event that the location of the principal place  
21 of business or any branch office is changed, the licensed  
22 mortgage broker shall notify the commissioner of the change.

1           §     -7   **Bond requirement, claims against bond.** (a) Every  
2 person licensed as a mortgage broker shall deposit with the  
3 commissioner, prior to doing business, a bond in the amount of  
4 \$50,000 executed by the licensed mortgage broker as principal  
5 and a surety company authorized to do business in this State as  
6 a surety. The bond shall be conditioned upon the faithful  
7 compliance of the licensed mortgage broker with this chapter and  
8 the rules adopted under this chapter. The bond shall run to the  
9 State for the benefit of any person injured by any violation of  
10 this chapter or the rules adopted under this chapter by the  
11 licensed mortgage broker or any officer, director, employee,  
12 partner, or member; provided that the aggregate liability of the  
13 surety shall not exceed the sum of the bond. The surety may  
14 cancel the bond by giving sixty days' written notice to the  
15 commissioner prior to the cancellation date of the bond and  
16 shall thereafter be relieved of any liability occurring after  
17 the effective date of cancellation. A license shall not be in  
18 effect at any time when the licensed mortgage broker's bond is  
19 not in full force and effect.

20           (b) The commissioner or any person injured by a violation  
21 of this chapter or rules adopted under this chapter, may bring

1 an action against the surety bond of the licensed mortgage  
2 broker who committed the violation.

3 (c) The commissioner or any person who is damaged by the  
4 licensed mortgage broker's violation of this chapter or rules  
5 adopted under this chapter, may bring suit upon the surety bond  
6 in the circuit court in which jurisdiction over the licensed  
7 mortgage broker may be obtained. In the event valid claims  
8 against a bond exceed the amount of the bond, each claimant  
9 shall only be entitled to a pro rata amount, based on the amount  
10 of the claim as it is valid against the bond, without regard to  
11 the date of filing of any claim or action. In no event shall  
12 the surety bond provide payment for any trebled or punitive  
13 damages.

14 (d) The remedies provided under this section are  
15 cumulative and nonexclusive and do not affect any other remedy  
16 available at law.

17 **§ -8 Fees, failure to pay fees.** (a) All fees shall be  
18 established and adopted by the commissioner in accordance with  
19 chapter 91 and shall be deposited into the compliance resolution  
20 fund established pursuant to section 26-9(o).

21 (b) Failure of any licensed mortgage broker to pay the  
22 renewal fee on or before the due date shall constitute an

1 automatic forfeiture of the license. The forfeited license may  
2 be restored; provided that application for restoration is made  
3 within six months of the forfeiture and a penalty fee is paid in  
4 addition to the delinquent license fee. A licensed mortgage  
5 broker who fails to restore a forfeited license as provided in  
6 this subsection shall apply as a new applicant.

7       **§ -9 Continuing education requirement.** (a) Prior to  
8 license renewal under this chapter, the licensed mortgage broker  
9 or the designated officer, director, employee, partner, or  
10 member must satisfactorily complete twelve hours of approved  
11 continuing education courses during the two-year period  
12 preceding the application for renewal. Each licensed mortgage  
13 broker must file a certificate of satisfactory completion of  
14 approved continuing education courses by the licensed mortgage  
15 broker no later than one month prior to the license expiration  
16 date. Failure to satisfy the continuing education requirement  
17 prior to one month before the license expiration date shall  
18 constitute an automatic forfeiture of the license. The  
19 forfeited license may be restored; provided that the continuing  
20 education requirement of this section is satisfied and  
21 application for restoration is made within six months of the  
22 forfeiture, and a penalty fee as may be prescribed by rule is

1 paid in addition to the delinquent license fee. A licensed  
2 mortgage broker who fails to restore a forfeited license as  
3 provided in this subsection shall apply as a new applicant.

4 (b) In order to receive approval of a continuing education  
5 course, the course provider must file an application with the  
6 commissioner, which includes the following items:

7 (1) The title and a description of the proposed course;

8 (2) A description of the proposed course provider's  
9 experience in offering this type of course; and

10 (3) A complete listing of all instructors for the proposed  
11 course, including their qualifications and experience  
12 teaching courses similar to this course.

13 (c) The commissioner shall review the applications filed  
14 and determine whether to approve or deny the proposed course.

15 If the commissioner approves the proposed course, the  
16 commissioner shall issue a certificate of approval that will be  
17 effective for two years from the date of its issuance.

18 (d) The commissioner shall keep a list of approved courses  
19 that will be provided to the public upon request.

20 **§ -10 Record keeping requirements.** (a) Each licensed  
21 mortgage broker shall maintain at its designated principal place  
22 of business in this State all books, accounts, records, and



1 documents necessary to determine the licensed mortgage broker's  
2 compliance with this chapter. All such books, accounts,  
3 records, and documents shall be kept available for review and  
4 examination by the commissioner for a period of six years.

5 (b) The commissioner may authorize the maintenance of  
6 books, accounts, records, and documents at a location other than  
7 the designated principal place of business in this State,  
8 provided that the licensed mortgage broker ensures that the  
9 books, accounts, records, and documents shall be kept in a  
10 secure location under conditions which will not lead to the  
11 damage or destruction of the books, accounts, records, and  
12 documents. The commissioner may require the books, accounts,  
13 records, and documents to be produced and available at a  
14 reasonable and convenient location in this State.

15 (c) If the commissioner determines that it is more  
16 effective or cost-efficient to perform a review or examination  
17 of the books, accounts, records, and documents at the licensed  
18 mortgage broker's out-of-state location, the licensed mortgage  
19 broker shall pay the reasonable travel expenses and per diem for  
20 each member of the commissioner's staff who participates in the  
21 review.

1           (d) The commissioner may prescribe the minimum information  
2 to be shown in the books, accounts, records, and documents of a  
3 licensed mortgage broker so that these will enable the  
4 commissioner to determine the licensed mortgage broker's  
5 compliance with this chapter.

6           (e) Nothing in this section shall prohibit a licensed  
7 mortgage broker from the use of document imaging or other  
8 electronic means in maintaining books, accounts, records, and  
9 documents; provided that the licensed mortgage broker can ensure  
10 adequate safeguards against alteration, damage, or destruction  
11 of the books, accounts, records, and documents.

12           **§ -11 Examinations, confidentiality.** (a) The  
13 commissioner may conduct examinations of licensed mortgage  
14 brokers under this chapter for the purpose of assuring that the  
15 licensed mortgage broker is in compliance with all laws, rules,  
16 or orders issued by the commissioner.

17           (b) The commissioner shall have full access to the vaults,  
18 books, accounts, records, and documents of the licensed mortgage  
19 broker and may make any inquiries as may be necessary to  
20 ascertain the condition of the licensed mortgage broker. All  
21 officers, directors, employees, partners, and members of the  
22 licensed mortgage broker being examined shall cooperate fully

1 with the commissioner and the commissioner's staff, and shall  
2 answer all inquiries and furnish all information pertaining to  
3 the same, to the best of their knowledge and ability.

4 (c) The commissioner may charge an examination fee based  
5 upon the cost per hour per examiner for all licensed mortgage  
6 brokers examined by the commissioner or the commissioner's  
7 staff. The hourly fee shall be \$40 or such amount as the  
8 commissioner shall establish by rule pursuant to chapter 91. In  
9 addition to the examination fee, the commissioner may charge any  
10 licensed mortgage broker examined or investigated by the  
11 commissioner or the commissioner's staff additional amounts for  
12 travel, per diem, mileage, and other reasonable expenses  
13 incurred in connection with the examination or investigation.

14 (d) Notwithstanding chapter 92F, the examination process  
15 and related information and documents, including the reports of  
16 examination, are confidential and are not subject to discovery  
17 in civil and criminal lawsuits or disclosure under federal or  
18 state law.

19 **§ -12 Written agreements.** (a) For any transaction  
20 between a licensed mortgage broker and a borrower seeking a  
21 residential mortgage loan, the following requirements shall  
22 apply:

1 (1) A licensed mortgage broker shall comply with all  
2 provisions of the Real Estate Settlement Procedures  
3 Act (12 U.S.C. § 1261), the Truth in Lending Act (15  
4 U.S.C. § 1601), the Equal Credit Opportunity Act (15  
5 U.S.C. § 1691), and any other applicable federal and  
6 state requirements, as those laws currently exist or  
7 as they may be amended.

8 (2) Any written commitment letter to make a residential  
9 mortgage loan with specified terms, including loan  
10 amount, interest rate, points, and payment terms,  
11 which is issued by a licensed mortgage broker and  
12 accepted by a borrower, must be honored by the  
13 licensed mortgage broker if the borrower has  
14 completely satisfied all of the conditions of the  
15 commitment in a timely manner and prior to the  
16 specified expiration date of the commitment.

17 (3) The mortgage broker shall provide the borrower with  
18 the following notice of the borrower's rights and  
19 obligations, not longer than one page in length and in  
20 twelve-point font, regarding the terms of the  
21 residential mortgage loan not later than within three  
22 business days of a borrower signing a completed

1 residential mortgage loan application and before the  
2 borrower gives the licensed mortgage broker any  
3 consideration:

4 **"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

5 If you obtain this loan, the lender will have a mortgage on  
6 your home. You could lose your home, and any money you  
7 have put into it, if you do not meet your obligations under  
8 the loan. Mortgage loan rates and closing costs and fees  
9 vary based on many factors, including your particular  
10 credit and financial circumstances, your earnings history,  
11 the loan-to-value requested, and the type of property that  
12 will secure your loan. The loan rate and fees could also  
13 vary based on which lender or mortgage broker you select.  
14 If you are uncertain about your rights and obligations  
15 under this agreement, you should consider consulting a  
16 qualified independent credit counselor or other experienced  
17 financial adviser regarding the rate, fees, and provisions  
18 of this mortgage loan before you proceed. For information  
19 on contacting a qualified credit counselor, call the United  
20 States Department of Housing and Urban Development for a  
21 list of counselors.

1           You are not required to complete any loan agreement merely  
2           because you have received these disclosures or have signed  
3           a loan application. If you proceed with this mortgage  
4           loan, you should also remember that you may face serious  
5           financial risks if you use this loan to pay off debts and  
6           then later incur significant new debts.  
7           Property taxes and homeowner's insurance are your  
8           responsibility. Not all lenders provide escrow services  
9           for these payments. You should ask your lender about these  
10          services. Your payments on existing debts contribute to  
11          your credit ratings. You should not accept any advice to  
12          ignore your regular payments to your existing creditors."

13           (b) The licensed mortgage broker shall secure a signed  
14          acknowledgment of receipt by the borrower of a copy of the  
15          notice.

16           **§ -13 Disclosure of mortgage brokerage fees. (a)**

17          Within three business days of receipt of a borrower's completed  
18          residential mortgage loan application by the licensed mortgage  
19          broker, and before the borrower gives the licensed mortgage  
20          broker any consideration, the licensed mortgage broker shall  
21          execute with the borrower a residential mortgage brokerage  
22          agreement. The residential mortgage brokerage agreement shall

1 be in writing, and signed and dated by both the borrower and the  
2 licensed mortgage broker whose services to the borrower  
3 constitute mortgage brokering.

4 (b) The residential mortgage brokerage agreement shall  
5 include a clear and conspicuous statement:

6 (1) That, upon request, a copy shall be made available to  
7 the borrower or the borrower's attorney for review  
8 prior to signing;

9 (2) Explaining whether the licensed mortgage broker serves  
10 as an agent for the borrower;

11 (3) Explaining the nature of the licensed mortgage  
12 broker's compensation, including whether the licensed  
13 mortgage broker may receive compensation from the  
14 borrower, the lender, or both;

15 (4) Describing the services the licensed mortgage broker  
16 agrees to perform for the borrower;

17 (5) As to the conditions under which the borrower is  
18 obligated to pay the fees to the licensed mortgage  
19 broker; and

20 (6) That provides that if the licensed mortgage broker  
21 makes materially false or misleading statements or

1 omissions in such agreement, the borrower may, upon  
2 written notice:

3 (A) Void the agreement;

4 (B) Recover moneys paid to the licensed mortgage  
5 broker for which no services have been performed;  
6 and

7 (C) Recover actual costs, including attorney fees,  
8 for enforcing the borrower's rights under the  
9 residential mortgage brokerage agreement.

10 (c) A copy of the fully executed residential mortgage  
11 brokerage agreement shall be given to the borrower by the  
12 licensed mortgage broker within three business days from the  
13 receipt of a borrower's completed residential mortgage loan  
14 application and before accepting any consideration from the  
15 borrower thereafter.

16 (d) The residential mortgage brokerage agreement shall be  
17 the only agreement between the borrower and licensed mortgage  
18 broker with respect to a single residential mortgage loan  
19 transaction prior to the acceptance of the residential mortgage  
20 loan commitment by the borrower; except that the licensed  
21 mortgage broker shall also provide to the borrower disclosure  
22 statements necessary to comply with the federal Truth-in-Lending



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1 Act (15 U.S.C. § 1601) and its associated regulations, the  
2 federal Real Estate Settlement Procedures Act (12 U.S.C. § 1261)  
3 and its associated regulations, and any other applicable federal  
4 and state requirements.

5 (e) A licensed mortgage broker shall not require a  
6 borrower to pay any fees or charges prior to the residential  
7 mortgage loan closing, except:

8 (1) Charges to be incurred by the licensed mortgage broker  
9 on behalf of the borrower for services from third  
10 parties necessary to process the residential mortgage  
11 loan application, such as credit reports and  
12 appraisals; and

13 (2) An application fee.

14 (f) A licensed mortgage broker shall not charge any fee  
15 that inures to the benefit of the licensed mortgage broker if it  
16 exceeds the fee disclosed on the most recent good faith  
17 estimate, when required by the federal Real Estate Settlement  
18 Procedures Act, unless:

19 (1) The need to charge the higher fee was not reasonably  
20 foreseeable at the time the good faith estimate was  
21 written; and

1           (2) The licensed mortgage broker has provided to the  
2           borrower, no less than three business days prior to  
3           the signing of the residential mortgage loan closing  
4           documents, a clear written explanation of the increase  
5           in the fee and the reason for charging a fee that  
6           exceeds that which was previously disclosed.

7           **§ -14 Disclosure of loan terms.** Prior to accepting any  
8           consideration from the borrower, a licensed mortgage broker  
9           shall disclose in writing to any applicant for a residential  
10          mortgage loan the following information:

11          (1) That the licensed mortgage broker may not make  
12          residential mortgage loans or issue residential  
13          mortgage loan commitments in the licensed mortgage  
14          broker's name, unless said licensed mortgage broker is  
15          the residential mortgage loan lender. The mortgage  
16          broker may issue a residential mortgage loan  
17          commitment and may furnish a lock-in of the interest  
18          rate and program on behalf of the residential mortgage  
19          loan lender when the licensed mortgage broker has  
20          obtained a written or electronically transmitted  
21          residential mortgage loan commitment or lock-in for  
22          the residential mortgage loan from the residential

1 mortgage loan lender on behalf of the borrower for the  
2 residential mortgage loan. The residential mortgage  
3 loan commitment issued by the licensed mortgage broker  
4 to the borrower on behalf of the residential mortgage  
5 loan lender shall be in the same form and substance as  
6 issued by the residential mortgage loan lender and  
7 shall identify the residential mortgage loan lender by  
8 name.

9 (2) That the licensed mortgage broker cannot guarantee  
10 acceptance into any particular residential mortgage  
11 loan program or promise any specific residential  
12 mortgage loan terms or conditions.

13 (3) A good faith estimate of the fees to be collected,  
14 when required by the federal Real Estate Settlement  
15 Procedures Act, including a credit report fee,  
16 property appraisal fee, or any other third-party fee.

17 (4) The terms and conditions for obtaining a refund of  
18 fees or arranging for the transfer of third-party  
19 service work products to another residential mortgage  
20 loan lender or mortgage broker, if any. Any amount  
21 collected in excess of the actual cost shall be

1 returned within thirty days after rejection,  
2 withdrawal, or closing.

3 § -15 Establishment of trust account for borrower funds  
4 to pay third-party providers. Each licensed mortgage broker  
5 shall as trustee hold all funds received from borrowers seeking  
6 a residential mortgage loan for payment to third-party  
7 providers. The funds may not be used for the benefit of the  
8 licensed mortgage broker or any person not entitled to any  
9 benefit, except as may be expressly permitted by law. Each  
10 licensed mortgage broker shall deposit the funds in a trust  
11 account maintained by the licensed mortgage broker with a bank  
12 or other financial institution located and authorized to accept  
13 deposits or engage in the business of a trust company in this  
14 State. Each licensed mortgage broker is responsible for  
15 depositing, holding, disbursing, accounting for, and otherwise  
16 dealing with the funds.

17 § -16 Suspension, revocation, denial, or condition of  
18 license, and refusal to renew, reinstate, or restore. (a) In  
19 addition to any other actions authorized by law, the  
20 commissioner may suspend, revoke, deny, condition in any manner,  
21 or refuse to renew, reinstate, or restore, any license issued  
22 under this chapter, or fine any person holding a license issued

1 under this chapter, for any cause authorized by law, including  
2 any of the following acts or conduct on the part of a licensed  
3 mortgage broker or the applicant thereof:

4 (1) Failure to meet or maintain the conditions and  
5 requirements necessary to qualify for the granting of  
6 a license;

7 (2) Procuring or attempting to procure a license through  
8 fraud, misrepresentation, or deceit;

9 (3) Knowingly making any misrepresentation or false  
10 promise likely to influence, persuade, or induce, or  
11 pursuing a course of misrepresentation or false  
12 promises through officers, directors, independent  
13 contractors, employees, partners, agents, and members,  
14 or through advertising, or otherwise;

15 (4) Misrepresentation or concealment of any material fact  
16 with respect to any transaction resulting in injury to  
17 any party;

18 (5) Failure to disburse funds in accordance with an  
19 agreement;

20 (6) Failure to account or deliver to any person any  
21 personal property including money, funds, deposit,  
22 check, draft, mortgage, or other document or thing of

- 1 value which has come into the person's hands and which  
2 is not the person's property or which the person is  
3 not in law or equity entitled to retain;
- 4 (7) Failure to place, within a reasonable time upon  
5 receipt, any money, funds, deposit, check, draft, or  
6 thing of value, entrusted to the licensed mortgage  
7 broker by any person dealing with the licensed  
8 mortgage broker as a broker, in escrow pursuant to a  
9 written agreement, or to deposit the money, funds  
10 deposit, check, or draft in a trust or escrow bank  
11 account maintained by the licensed mortgage broker  
12 with a bank or other financial institution located and  
13 authorized to accept deposits or engage in the  
14 business of a trust company in this State, wherein the  
15 funds shall be kept until disbursement thereof is  
16 authorized;
- 17 (8) Engaging in false, fraudulent, or deceptive  
18 advertising, or making untruthful or improbable  
19 statements;
- 20 (9) Being a habitual user of a narcotic, barbiturate,  
21 amphetamine, hallucinogen, opium, or cocaine, or other  
22 drugs or derivatives of a similar nature;

- 1           (10) Practicing the licensed profession of mortgage broker  
2                   while impaired by alcohol, drugs, or mental  
3                   instability;
- 4           (11) Aiding and abetting an unlicensed person to directly  
5                   or indirectly perform activities requiring a license;
- 6           (12) Professional misconduct, incompetence, gross  
7                   negligence, or manifest incapacity in the practice of  
8                   the licensed profession of mortgage broker;
- 9           (13) Failure to maintain a record or history of competency,  
10                   trustworthiness, fair dealing, and financial  
11                   integrity;
- 12          (14) Conduct or practice contrary to recognized standards  
13                   of ethics for the licensed profession of mortgage  
14                   broker;
- 15          (15) Engaging in business under a past or present license  
16                   issued pursuant to the licensing laws, in a manner  
17                   causing injury to one or more members of the public;
- 18          (16) Failure to comply, observe, or adhere to any law in a  
19                   manner such that the commissioner deems the applicant  
20                   or holder to be an unfit or improper person to hold a  
21                   license;

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1 (17) Revocation, suspension, or other disciplinary action  
2 by another state or federal agency against a licensed  
3 mortgage broker or applicant for any reason provided  
4 by the licensing laws or this section;

5 (18) Criminal conviction, whether by nolo contendere or  
6 otherwise, of a penal crime directly related to the  
7 qualifications, functions, or duties of the licensed  
8 profession of mortgage broker;

9 (19) Failure to report in writing to the commissioner any  
10 disciplinary decision issued against the licensed  
11 mortgage broker or the applicant in another  
12 jurisdiction within thirty days of the disciplinary  
13 decision;

14 (20) Employing, utilizing, or attempting to employ or  
15 utilize at any time any person not licensed under the  
16 licensing laws where licensure is required; or

17 (21) Failure to comply with this chapter, the applicable  
18 licensing laws, or any rule or order made under the  
19 authority of this chapter.

20 (b) For a licensed mortgage broker other than an  
21 individual, it shall be sufficient cause for the suspension or  
22 revocation of the license if any officer, director, employee,



1 partner, or member of the licensed corporation, partnership,  
2 association, or other organization has so acted as would be  
3 cause for suspension or revocation of the license of an  
4 individual.

5 (c) Orders for suspension or revocation shall be made only  
6 pursuant to chapter 91.

7 **§ -17 Power to investigate and enjoin.** (a) If the  
8 commissioner has reason to believe that a licensed mortgage  
9 broker or any person has violated this chapter, the rules  
10 adopted pursuant thereto, or an order of the commissioner or  
11 that any license issued under this chapter may be subject to  
12 suspension, revocation, or other sanction the commissioner may  
13 make an investigation as the commissioner deems necessary and  
14 may examine the books, accounts, records, and documents of any  
15 licensed mortgage broker or person. If the commissioner finds  
16 from satisfactory evidence that any licensed mortgage broker or  
17 person has violated this chapter, the commissioner may bring an  
18 action in the name of the State in any court of competent  
19 jurisdiction against the licensed mortgage broker or person to  
20 enjoin the licensed mortgage broker or person from continuing  
21 the violation or engaging therein or doing any act or acts in  
22 furtherance thereof.

1           (b) Any person having reason to believe that this chapter  
2 or the rules adopted pursuant thereto have been violated or that  
3 a license issued under this chapter is subject to suspension,  
4 revocation, or other sanction may file with the commissioner a  
5 written complaint setting forth the details of the alleged  
6 violation or grounds for suspension, revocation, or other  
7 sanction.

8           **§ -18 Cease and desist orders, grounds for issuance.** (a)

9 Whenever it appears to the commissioner that any person has  
10 engaged or is about to engage in any act or practice constituting  
11 a violation of any:

12           (1) Provision of this chapter;

13           (2) Rule adopted or order issued under this chapter; or

14           (3) Condition of an approval of request or application by  
15           the commissioner or a written agreement between such  
16           person and the commissioner,

17 the commissioner may, in the commissioner's discretion, issue a  
18 cease and desist order to enforce compliance with this chapter,  
19 with any rule adopted or order issued under this chapter, or with  
20 the conditions of such approval or written agreement. The  
21 commissioner shall have the discretion to include in the order an  
22 assessment of an administrative fine against any person who

1 violates this chapter or who has knowingly violated a written  
2 agreement with, or a rule or order of, the commissioner made  
3 pursuant to this chapter.

4 (b) The commissioner may issue a cease and desist order to  
5 any mortgage broker, or any other person including the mortgage  
6 broker's officers, directors, employees, partners, or members,  
7 that the commissioner finds or has reasonable cause to believe:

8 (1) Is violating, has violated, or is about to violate this  
9 chapter or any rules adopted pursuant to this chapter;

10 (2) Is violating, has violated, or is about to violate any  
11 written condition imposed or order issued by the  
12 commissioner on the mortgage broker, its officers,  
13 directors, employees, partners, or members, or any  
14 condition of a written agreement between the mortgage  
15 broker, its officers, directors, employees, partners, or  
16 members and the commissioner;

17 (3) Is engaging, has engaged, or is about to engage in an  
18 illegal or unauthorized practice; or

19 (4) Is failing to maintain books, accounts, records and  
20 documents as required by this chapter.

21 **§ -19 Cease and desist orders, procedure, hearing,**

22 **enforcement.** (a) The notice of charges and proposed cease and

1 desist order shall be in writing and shall be served upon the  
2 mortgage broker at its principal office in this State and upon any  
3 other affected party wherever that person can be located and  
4 served by the commissioner. The notice of charges shall state the  
5 alleged violations or wrongful practices and a summary of the  
6 facts in support of the allegations. The notice shall be  
7 accompanied by a proposed order that states the commissioner's  
8 intent to require discontinuance of the violation or practice and  
9 the immediate compliance with all requirements of any applicable  
10 agreement, conditions of approval, order, or law. The proposed  
11 order may also direct affirmative action as may be necessary to  
12 correct the alleged violation or wrongful practice. The notice of  
13 charges shall set forth a time and place for a hearing to  
14 determine whether the proposed order shall be issued.

15 (b) Within twenty days after service of a notice of charges,  
16 unless an earlier date or later date is set by the commissioner  
17 upon request of the affected party, the commissioner or the  
18 commissioner's delegate shall hold a hearing in accordance with  
19 chapter 91. If no appearance is made at the scheduled hearing by  
20 the party or its duly authorized representative, the party shall  
21 be deemed to have consented to the issuance of the cease and  
22 desist order and the commissioner may issue the order. Any cease

1 and desist order issued after a hearing held in accordance with  
2 this subsection shall become effective after service upon the  
3 affected party and shall remain effective until modified or  
4 terminated by the commissioner. Any appeal of a cease and desist  
5 order shall be made to the circuit court in accordance with  
6 chapter 91.

7 (c) On or after the effective date of any cease and desist  
8 order, the commissioner may apply for enforcement of the order to  
9 the circuit court. The application may also contain a petition  
10 for such other relief or remedies as may be appropriate in the  
11 circumstances. The application shall be given preference over  
12 other cases pending in court, and shall in every way be expedited.

13 **§ -20 Consent cease and desist orders.** Any affected  
14 party may waive its rights to a hearing on any notice of charges  
15 by stipulating and consenting to the issuance of a cease and  
16 desist order. Any cease and desist order issued by consent shall  
17 be effective as of the date specified therein and shall remain  
18 effective until modified or terminated by the commissioner.

19 **§ -21 Powers of commissioner.** In addition to any other  
20 acts or conditions provided by law, the commissioner may:

21 (1) Adopt, amend, or repeal rules, issue declaratory  
22 rulings or informal non-binding interpretations, and

- 1           conduct contested case proceedings pursuant to chapter  
2           91;
- 3           (2) Grant, deny, forfeit, renew, reinstate, or restore the  
4           license of any mortgage broker;
- 5           (3) Revoke, suspend, or otherwise limit the license of any  
6           mortgage broker for any violation of the provisions in  
7           this chapter, or any rule or order of, or agreement  
8           with the commissioner;
- 9           (4) Develop requirements for licensure through rules;
- 10          (5) Investigate and conduct hearings regarding any  
11          violation of this chapter, and any rule or order of or  
12          agreement with the commissioner;
- 13          (6) Prepare, administer, and grade examinations; provided  
14          that the commissioner may contract with a testing  
15          agency to provide those services, and the commissioner  
16          may also reserve the right to modify, amend, change,  
17          or regrade the examination;
- 18          (7) Create fact-finding committees that may make  
19          recommendations to the commissioner for the  
20          commissioner's deliberations;
- 21          (8) Request a criminal history record check of the  
22          applicant and any of its officers, directors,

1 employees, partners, and members in accordance with  
2 Section 846-2.7;

3 (9) Contract with qualified persons including  
4 investigators who may be exempt from chapter 76 and  
5 who shall assist the commissioner in exercising the  
6 commissioner's powers and duties; and

7 (10) Subpoena witnesses and documents, administer oaths,  
8 and receive affidavits and oral testimony, including  
9 telephonic communications, and do any and all things  
10 necessary or incidental to the exercise of the  
11 commissioner's power and duties, including the  
12 authority to conduct contested case proceedings under  
13 chapter 91.

14 § -22 **Summary suspension.** (a) Notwithstanding any law  
15 to the contrary, the commissioner or delegate may cause the  
16 immediate suspension or restriction of a license, subject to  
17 subsequent notice and hearing or other adequate procedures, upon  
18 a specific determination that the failure to take such an action  
19 may result in: (1) an immediate and unreasonable threat to  
20 personal safety; or (2) fraud or misrepresentation upon  
21 consumers, and that, for the protection of the public from the

1 possible consequences of practices, the licensed mortgage  
2 broker's license should be immediately suspended or restricted.

3 (b) The commissioner or delegate may order the summary  
4 suspension of the license for a period not to exceed twenty  
5 days. The order of suspension shall be served upon the licensed  
6 mortgage broker at the same time as the notice of hearing for  
7 disciplinary action, and the hearing shall be scheduled prior to  
8 the expiration of the order of suspension. The period of  
9 suspension prior to the hearing shall not be extended beyond  
10 twenty days except upon request of the licensed mortgage broker  
11 for a reasonable continuance to adequately prepare the licensed  
12 mortgage broker's defense. Any attempt by the licensed mortgage  
13 broker to continue the licensed activity while the license has  
14 been summarily suspended shall of itself be sufficient to  
15 warrant a permanent revocation of the license and shall subject  
16 the licensed mortgage broker to all penalties prescribed by this  
17 chapter, or any rule or order of the commissioner.

18 § -23 **Fees, commissions, and charges.** The commissioner  
19 may also adopt rules concerning maximum brokerage fees,  
20 commissions, and charges on brokered residential mortgage loan  
21 transactions. The commissioner may also adopt rules concerning



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1 the full disclosure of the brokerage fees, commissions, and  
2 charges.

3       **§ -24 Private right of action.** Nothing in this chapter  
4 shall be construed to preclude any individual or entity who  
5 suffers loss as a result of a violation of this chapter from  
6 maintaining a civil action to recover damages and, as provided  
7 by statute, attorney fees.

8       **§ -25 Penalty.** Any person who violates any one  
9 provision of this chapter shall be subject to an administrative  
10 fine of not more than \$5,000 for each violation."

11       SECTION 2. Chapter 454, Hawaii Revised Statutes, is  
12 repealed.

13       SECTION 3. This Act shall take effect on July 1, 2007.

14  
15  
16  
17

INTRODUCED BY:   
BY REQUEST

JUSTIFICATION SHEET

**SB. NO. 2279**

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE BROKERS.

PURPOSE: The purpose of this bill is to repeal the existing law on Mortgage Brokers and Solicitors, chapter 454, Hawaii Revised Statutes (HRS), and to replace it with a statute that provides for more specialized regulation of residential mortgage brokers by the Division of Financial Institutions (DFI) rather than the Professional & Vocational Licensing Division (PVL) as is now the case. PVL's oversight is currently limited only to registration of all mortgage brokers and solicitors. Key provisions in the bill redefine "mortgage broker" to have it apply only to those who deal in residential mortgage loan transactions, (brokers of non-residential property will no longer be regulated), eliminate the regulation of mortgage solicitors, establish pre-licensing testing for applicants, continuing education requirements, and periodic examinations for licensees, and increase the required bond from \$15,000 to \$50,000. These changes will serve to improve licensed residential mortgage broker skill and experience levels and consistently monitor the industry's provision of its services without resort to unfair, deceptive, and fraudulent practices.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS) and repeal chapter 454, HRS.

JUSTIFICATION: Responsibility for the licensing and regulation of all mortgage brokers and solicitors currently rests with the Professional and Vocational Licensing Division pursuant to chapters 436B and 454, HRS. The activities of residential mortgage

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brokers have a particularly direct, valuable, and immediate impact upon this State's consumers. This reorganization is proposed to initiate a more unified, effective, and seamless supervision of residential mortgage brokering activities in Hawaii. Consumer interests will be better protected by ensuring that financial service industry practices identified as harmful to consumers are monitored and addressed in a comprehensive and consistent fashion by the division charged with overall supervision of the financial services industry in Hawaii, rather than dividing this responsibility between two agencies (DFI and PVL) as is presently the case.

The licensing requirements of the statute will provide for the licensing of residential mortgage brokers only.

Provisions clarify who is exempt from the statute and what constitutes prohibited activity under the statute.

Licensing requirements specify that if a licensee is a person other than an individual, all of its officers, directors, employees, partners, or members may engage in residential mortgage brokering so long as a responsible individual for the licensee has been designated. If the licensee is an individual, all of the licensee's employees may engage in residential mortgage brokering. License application requirements are established, and include a written examination of the applicant or its designated responsible individual, along with a \$50,000 bond requirement for a licensee.

Provision for biennial license renewal includes completion of a continuing education requirement by the licensee,

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if an individual, or by its responsible individual if the licensee is not an individual.

Comprehensive record keeping requirements are established for residential mortgage brokers and provide for a six year retention period. Records are allowed to be kept out-of-state provided the commissioner has ready access in Hawaii to any requested record.

This bill establishes DFI's right to examine licensees under the statute, and provides for the confidentiality of all examination related information.

This bill mandates compliance with applicable federal and state laws related to lending, and imposes mandatory disclosures that provide enhanced consumer protection relating to a borrower's loan application.

The licensee's deadline to issue a mortgage brokerage agreement to a loan applicant, together with the required content of such agreement, is specified.

A provision establishes when payment of certain fees and charges may be required by a residential mortgage broker, and the circumstances in which a fee may exceed the estimated amount of such fee as disclosed on the most recent good faith estimate given to the borrower.

A provision mandates establishment by licensed mortgage brokers of a trust account for borrower funds to pay third-party providers of services.

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The grounds for suspension or revocation of a mortgage broker license are specified.

The powers of the commissioner under the statute, including authority to investigate or enjoin any person for violations of the statute, and to set maximum fees, commissions, and charges for licensees, are set out.

A provision establishes a fine of not more than \$5,000 per violation or imprisonment of not more than one year for any violation of the chapter, and makes any contract entered into with an unlicensed mortgage broker void and unenforceable.

Impact on the public: Upon enactment of this measure, regulation of the residential mortgage brokers licensed to do business in Hawaii will be centralized in the hands of one agency, DFI. As a consequence, the general public, as well as the residential mortgage broker industry will receive more consistent treatment with respect to applications, inquiries, regulation, and enforcement.

Impact on the department and other agencies: Additional regulatory and administrative functions to be assumed by DFI will entail the transfer of one clerical position within the Department to DFI and the addition of two entry level examiner positions to provide examination and supervision oversight.

GENERAL FUND: None.

OTHER FUNDS: PVL's mortgage broker program, which registers all mortgage brokers and mortgage solicitors, generated approximately \$230,000 in FY 2003 when

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the biennial licenses were renewed, \$121,420 in FY 2004, and \$384,626 in FY 2005. This bill does not contemplate the licensing of non-residential mortgage brokers or mortgage solicitors, who constitute the majority of applications and renewals processed, but who pay lower fees than residential mortgage brokers. The bill does, however, include a far more rigorous licensing and supervision process for residential mortgage brokers than that currently employed by PVL. It is anticipated that net revenues would decline somewhat from those now realized by PVL. However, such revenues would be adequate to fund the licensing and supervisory program contemplated by the bill.

PPBS PROGRAM  
DESIGNATION:

CCA-104.

OTHER AFFECTED  
AGENCIES:

Professional and Vocational Licensing  
Division, Regulated Industries  
Complaints Office, Hawaii Criminal  
Justice Data Center.

EFFECTIVE DATE:

July 1, 2007.