
A BILL FOR AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding to title 22 a new chapter to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **RESIDENTIAL MORTGAGE PRACTICES ACT**

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

8 "Agent" means a person who acts with the consent and on
9 behalf of a licensee, and is subject to the licensee's direct or
10 indirect control, and may include an independent contractor.

11 "Applicant" means a person applying for a mortgage broker,
12 a mortgage lender, or a loan originator license pursuant to this
13 chapter.

14 "Borrower" means the person who has applied for or obtained
15 a residential loan from or through a licensee, or from or
16 through a person required to be licensed under this chapter.

17 "Commissioner" means the commissioner of financial
18 institutions of this State.

1 "Division" means the division of financial institutions of
2 the department of commerce and consumer affairs of this State.

3 "Employee" means an individual engaged in the service of a
4 licensed mortgage broker or mortgage lender for compensation or
5 gain, who is subject to withholding, the Federal Income
6 Contributions Act, and other lawful deductions by the licensed
7 mortgage broker or mortgage lender as a condition of employment
8 and is subject to the right of the licensed mortgage broker or
9 mortgage lender to direct and control the actions of the
10 employee.

11 "Institutional investor" means:

12 (1) Banks, savings and loan institutions, savings banks,
13 trust companies, insurance companies, investment
14 companies as defined in the Investment Company Act of
15 1940, pension or profit sharing trusts, any of the
16 classes of persons permitted to qualify as foreign
17 lenders under section 207-11, or other financial
18 institutions or institutional buyers, whether acting
19 for themselves or as fiduciaries; and

20 (2) The United States or any foreign government, or any
21 agency or corporate or other instrumentality of the

1 United States, a foreign government, or political
2 subdivision thereof.

3 "Licensee" means a person licensed pursuant to this chapter
4 to engage in the activities regulated by this chapter.

5 "Loan originator" means an individual, other than an exempt
6 person, who performs the activities described in this chapter
7 with respect to a residential mortgage loan. For the purposes
8 of this chapter, the term "loan originator" does not include
9 persons who are mortgage brokers or mortgage lenders.

10 "Loan origination activities" means engaging in any of the
11 following activities for direct or indirect compensation or
12 gain, while representing or acting on behalf of a mortgage
13 broker or mortgage lender:

- 14 (1) Soliciting, accepting, or offering to accept an
15 application for a residential mortgage loan;
- 16 (2) Assisting a borrower or offering to assist a
17 borrower in the preparation of a residential
18 mortgage loan application; or
- 19 (3) Negotiating or offering to negotiate the terms or
20 conditions of a residential mortgage loan with a
21 borrower.

1 "Manager" means the manager of a manager-managed limited
2 liability company.

3 "Mortgage broker" means any person, other than an exempt
4 person, who performs the activities described in this chapter
5 with respect to a residential mortgage loan. For the purposes
6 of this chapter, the term "mortgage broker" does not include
7 persons who are mortgage lenders.

8 "Mortgage brokering activities" means engaging in any of
9 the following activities for direct or indirect compensation or
10 gain with any person making residential mortgage loans:

- 11 (1) Accepting or offering to accept an application for a
12 residential mortgage loan;
- 13 (2) Assisting or offering to assist in the preparation of
14 an application for a residential mortgage loan; or
- 15 (3) Negotiating or offering to negotiate the terms or
16 conditions of a residential mortgage loan.

17 "Mortgage brokerage agreement" means a written agreement in
18 which a mortgage broker agrees to obtain a residential mortgage
19 loan for the borrower or assist the borrower in obtaining a
20 residential mortgage loan.

1 "Mortgage lender" means any person, other than an exempt
2 person, who makes residential mortgage loans, and performs the
3 activities described in this chapter.

4 "Mortgage lending activities" means engaging in any of the
5 following activities for direct or indirect compensation or
6 gain:

7 (1) Accepting or offering to accept an application for a
8 residential mortgage loan; or

9 (2) Assisting or offering to assist in the preparation of
10 an application for a residential mortgage loan.

11 "Person" means an individual, sole proprietorship,
12 partnership, corporation, limited liability company, limited
13 liability partnership, or other association of individuals,
14 however organized.

15 "Real Estate Settlement Procedures Act" means the act set
16 forth in title 12 United States Code section 2601, et seq., as
17 amended from time to time.

18 "Regulation X" means Regulation X as promulgated by the
19 U.S. Department of Housing and Urban Development and codified in
20 title 24 Code of Federal Regulations part 3500, as amended from
21 time to time.

1 "Regulation Z" means Regulation Z as promulgated by the
2 board of governors of the Federal Reserve System and codified in
3 title 12 Code of Federal Regulations part 226, as amended from
4 time to time.

5 "Residential mortgage loan" means any loan on residential
6 real property that will be used primarily for personal, family,
7 or household use and secured primarily by a security interest on
8 such residential property.

9 "Residential real property" means real property improved or
10 to be improved by a one-to-four family dwelling.

11 "Truth in Lending Act" means the act set forth in title 15
12 United States Code section 1601, et seq., as amended from time
13 to time.

14 "Uniform multistate automated licensing system" means a
15 system involving one or more states, the District of Columbia,
16 or the Commonwealth of Puerto Rico established to facilitate the
17 sharing of regulatory information and the licensing and
18 application processes, by electronic or other means, for
19 mortgage brokers, mortgage lenders, and loan originators.

20 **§ -2 Exemptions.** This chapter shall not apply to the
21 following:

1 (1) Any person licensed or chartered under the laws of
2 this State or of the United States to do business in
3 this State as a bank, trust company, savings and loan
4 institution, savings bank, pension trust, credit
5 union, insurance company, financial services loan
6 company, or federally licensed small business
7 investment company. The terms "bank", "trust
8 company", "savings and loan institution", "savings
9 bank", "pension trust", "credit union", "insurance
10 company", "financial services loan company", or
11 "federally licensed small business investment company"
12 shall include employees and agents of such
13 organizations, the wholly owned subsidiaries of such
14 organizations provided that the subsidiary is
15 regularly examined by the licensing or chartering
16 state or federal agency for consumer compliance
17 purposes, and the employees and agents of those wholly
18 owned subsidiaries, and shall also include employees
19 and agents of a licensee if the licensee is an
20 affiliate of a bank and is wholly owned by the holding
21 company that owns the bank;

- 1 (2) A person making or acquiring a residential mortgage
2 loan with the person's own funds for the person's own
3 investment without intent to resell the residential
4 mortgage loan;
- 5 (3) A person licensed to practice law in this State, not
6 actively and principally engaged in the business of
7 negotiating residential mortgage loans, when the
8 person renders services in the course of the person's
9 practice as an attorney;
- 10 (4) A person licensed as a real estate broker or
11 salesperson in this State, not actively and
12 principally engaged in the business of negotiating
13 residential mortgage loans, when the person renders
14 services in the course of the person's practice as a
15 real estate broker or salesperson;
- 16 (5) An institutional investor negotiating, entering into,
17 or performing under a residential mortgage loan
18 purchase agreement for its portfolio, for subsequent
19 resale to other institutional investors, or for
20 placement of the residential mortgage loans into pools
21 or packaging them into mortgage-backed securities. As
22 used in this paragraph, "loan purchase agreement"

1 means an agreement or arrangement under which a bank,
2 savings and loan institution, credit union, financial
3 services loan company, or other financial institution
4 authorized to do business in this State agrees to sell
5 residential mortgage loans or obtain funding therefor,
6 with or without the transfer of servicing rights, to
7 an institutional investor;

8 (6) A foreign lender conducting business in accordance
9 with part II of chapter 207;

10 (7) A person licensed under chapter 467 as a real estate
11 broker or salesperson selling time share interests as
12 an authorized representative of and on behalf of a
13 time share plan developer that is licensed as a
14 mortgage broker or mortgage lender under this chapter;
15 provided that:

16 (A) The acts or conduct of a developer's authorized
17 representative shall be deemed to be the acts or
18 conduct of the developer for the purposes of
19 section -23; and

20 (B) If the person engages in acts or conduct
21 prohibited under section -23, the acts or

1 conduct shall constitute grounds for disciplinary
2 action under section 467-14; and

3 (8) Persons employed by, or who contract with, a licensee
4 under this chapter to perform only clerical or
5 administrative functions on behalf of such licensee,
6 and who do not solicit borrowers or negotiate the
7 terms of loans on behalf of the licensee.

8 **§ -3 Unlicensed activity.** Unless licensed under this
9 chapter, no person required to be licensed shall act, attempt to
10 act, or hold oneself out as a mortgage broker, mortgage lender,
11 or loan originator.

12 **§ -4 Powers and duties of the commissioner.** (a) In
13 addition to any other duties imposed upon the commissioner by
14 law, the commissioner shall:

15 (1) Administer and enforce the provisions and requirements
16 of this chapter;

17 (2) Conduct investigations and issue subpoenas as
18 necessary to determine whether a person has violated
19 any provision of this chapter or rules promulgated
20 under the authority of this chapter;

21 (3) Conduct examinations of the books and records of
22 licensees and conduct investigations as necessary and

1 proper for the enforcement of this chapter and the
2 rules adopted under this chapter;

3 (4) Issue orders and adopt rules that, in the opinion of
4 the commissioner, are necessary to execute, enforce
5 and effectuate the purposes of this chapter;

6 (5) Establish the content of written examinations to be
7 administered to applicants or an applicant's designee,
8 and determine criteria for a passing grade; and

9 (6) Require that all funds collected by the division under
10 this chapter be deposited into the compliance
11 resolution fund established pursuant to section 26-
12 9(o).

13 **§ -5 Uniform multistate automated licensing system. (a)**

14 The legislature has determined that a uniform multistate
15 administration of an automated licensing system for mortgage
16 brokers, mortgage lenders and individual loan originators is
17 consistent with both the public interest and the purposes of
18 this chapter. For the sole purpose of participating in the
19 establishment and implementation of a multistate automated
20 licensing system for mortgage brokers, mortgage lenders, and
21 individual loan originators, the commissioner is authorized:

22 (1) To modify by rule the license renewal dates;

- 1 (2) To establish by rule such new requirements as are
2 necessary for the State to participate in a multistate
3 automated licensing system upon the commissioner's
4 finding that each new requirement is consistent with
5 both the public interest and the purposes of this
6 chapter; and
- 7 (3) To request a criminal history record check of the
8 applicant or the applicant's officers, directors,
9 partners, members, managers, employees, or agents in
10 accordance with section 846-2.7 at such time as this
11 State joins a multistate automated licensing system
12 for mortgage brokers, mortgage lenders, and loan
13 originators pursuant to this section. The information
14 obtained thereby may be used by the commissioner to
15 determine the applicant's eligibility for licensing
16 under this chapter. The fee required to perform the
17 criminal history record check shall be paid by the
18 applicant. Information obtained or held by the
19 commissioner pursuant to this paragraph shall be
20 considered confidential personal information and shall
21 be exempt from disclosure. This paragraph does not
22 preclude the commissioner from obtaining criminal

1 history record checks on applicants for mortgage
2 brokers, mortgage lenders, and loan originators prior
3 to the time this State joins the multistate system.

4 (b) Nothing in this section shall authorize the
5 commissioner to require any person exempt under section -2,
6 or employees or agents of any such exempt person, to submit
7 information to, or to participate in, the uniform multistate
8 automated licensing system.

9 **§ -6 License to do business as a mortgage broker or as a**
10 **mortgage lender.** (a) The commissioner shall receive and act on
11 all applications for licenses to do business as a mortgage
12 broker or mortgage lender. Prior to the processing of an
13 application, the commissioner may require that a criminal
14 history record check be conducted on the applicant or any of its
15 officers, directors, partners, members, managers, employees, or
16 agents in accordance with section 846-2.7, the fees to be paid
17 by the applicant. Applications shall be filed in the manner
18 prescribed by the commissioner, shall contain such information
19 as the commissioner may reasonably require, shall be updated as
20 necessary to keep the information current, and shall be
21 accompanied by an application fee of \$2,000 or such greater
22 amount as the commissioner shall establish by rule pursuant to

1 chapter 91. When an application for licensure is abandoned,
2 denied, or withdrawn, the commissioner shall retain all fees
3 paid by the applicant.

4 (b) An application for license may be denied if the
5 commissioner finds that:

6 (1) The financial responsibility, character, and fitness
7 of the license applicant, or of the officers and
8 directors if the applicant is a corporation, the
9 partners if the applicant is a partnership, the
10 members or managers if the applicant is a limited
11 liability company, or the individuals designated in
12 charge of the applicant's places of business, are not
13 such as to warrant belief that the business will be
14 operated honestly and fairly within the purposes of
15 this chapter;

16 (2) The individuals designated in charge of the
17 applicant's places of business do not have a minimum
18 of three years' experience in residential mortgage
19 lending;

20 (3) The applicant has been convicted of a penal crime,
21 either by nolo contendere or otherwise, that is

1 directly related to the qualifications, functions, or
2 duties of a mortgage broker or mortgage lender;

3 (4) The applicant has had a license, substantially
4 equivalent to a license under this chapter and issued
5 by any state, that was denied, revoked or suspended
6 under the laws of such state;

7 (5) The applicant has filed an application for a license
8 which is false or misleading with respect to any
9 material fact;

10 (6) The applicant or any officer, director, partner,
11 member, manager, employee, or agent of the applicant
12 has violated this chapter or any rule or order
13 lawfully made pursuant to this chapter;

14 (7) The applicant or any officer, director, partner,
15 member, manager, employee, or agent of the applicant
16 has violated any state or federal law, rule or
17 regulation pertaining to the financial services
18 industry;

19 (8) The applicant or the applicant's designee has failed
20 to pass a written examination established by the
21 commissioner pursuant to section -4; or

1 (9) The applicant has not provided information on the
2 application as reasonably required by the commissioner
3 pursuant to subsection (a).

4 (c) The commissioner is empowered to conduct any
5 investigation that the commissioner may deem necessary to
6 determine whether any of the circumstances set forth in
7 subsection (b) exist.

8 (d) In the event that the commissioner orders the denial
9 of the issuance or renewal of a license, the order shall be made
10 pursuant to chapter 91.

11 (e) Every licensee under this section shall establish and
12 maintain an office in this State that shall be licensed under
13 this chapter as the licensee's principal office location for the
14 transaction of mortgage business. Upon obtaining approval for a
15 license, an initial license fee for the licensee's principal
16 office shall be paid to the commissioner in the amount of \$100
17 or such greater amount as the commissioner shall establish by
18 rule pursuant to chapter 91.

19 (f) The commissioner may, on application, issue additional
20 branch licenses to the same licensee upon compliance with all
21 the provisions of this chapter governing the issuance of a
22 single license. Applications shall be filed in the manner

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1 prescribed by the commissioner, shall contain such information
2 as the commissioner may reasonably require, shall be updated as
3 necessary to keep the information current, and shall be
4 accompanied by an application fee of \$500 or such greater amount
5 as the commissioner shall establish by rule pursuant to chapter
6 91. Upon obtaining approval for a license for a branch office,
7 an initial license fee for each branch office shall be paid to
8 the commissioner in the amount of \$100 or such greater amount as
9 the commissioner shall establish by rule pursuant to chapter 91.
10 A separate license shall be required for each place of business
11 from which mortgage brokering activities or mortgage lending
12 activities are conducted. The individual in charge of each
13 place of business:

- 14 (1) Shall have a minimum of three years' experience in
15 residential mortgage lending;
- 16 (2) Shall not have been convicted of a penal crime, either
17 by nolo contendere or otherwise, that is directly
18 related to the qualifications, functions, or duties of
19 a mortgage broker or mortgage lender; and
- 20 (3) Shall not have had a license, substantially equivalent
21 to a license under this chapter and issued by any

1 state, which was denied, revoked, or suspended under
2 the laws of such state.

3 Each license under this section shall remain in full force and
4 effect unless the licensee does not satisfy the renewal
5 requirements contained in this chapter, or the license is
6 surrendered, suspended, or revoked; provided that branch
7 licenses shall be terminated upon the surrender or revocation of
8 a principal office license.

9 (g) No licensee under this section shall change the
10 location of any place of business, or consolidate two or more
11 locations, without giving the commissioner at least thirty days'
12 prior written notice. A licensee under this section shall give
13 written notice to the commissioner within five days of the
14 closure of any branch location licensed under this chapter.
15 Written notice of the closure of a branch office location shall
16 include a detailed explanation of the disposition of all loan
17 applications pending at the time of closure of the licensed
18 location and the disposition of all files and records. A
19 mortgage lender shall also provide a detailed explanation of the
20 disposition of any closed loans that are being serviced by the
21 mortgage lender at the time of closure of the licensed location.

1 (h) A mortgage broker or mortgage lender may voluntarily
2 cease activity for which a license to operate is required by
3 this chapter and surrender its license in the manner prescribed
4 by rule.

5 (i) No licensee under this section shall engage in the
6 business of making or brokering residential mortgage loans at
7 any place of business for which the licensee does not hold a
8 license nor shall the licensee engage in business under any name
9 other than that on the license.

10 (j) The commissioner may suspend action upon a mortgage
11 broker or mortgage lender license application pending resolution
12 of any criminal charges against an applicant before any court of
13 competent jurisdiction if that applicant's conviction would
14 disqualify the applicant.

15 (k) The commissioner may suspend action upon a mortgage
16 broker or mortgage lender license application pending resolution
17 of any civil action or administrative proceeding against an
18 applicant if the civil action or administrative proceeding
19 involves any aspect of a financial services business and the
20 outcome could disqualify the applicant.

21 (l) An applicant under this section shall make complete
22 disclosure of all information required in the application,

1 including information concerning officers, directors, partners,
2 members, managers, employees, or agents. An applicant, or an
3 individual acting on behalf of the applicant, is not liable in
4 any civil action other than a civil action brought by a
5 governmental agency, related to an alleged untrue statement made
6 pursuant to this section unless it is shown by clear and
7 convincing evidence that:

8 (1) The applicant, or an individual acting on behalf of
9 the applicant, knew at the time the statement was made
10 that it was false in any material respect; or

11 (2) The applicant, or an individual acting on behalf of
12 the applicant, acted in reckless disregard as to the
13 statement's truth or falsity.

14 (m) Each mortgage broker or mortgage lender licensed under
15 this chapter shall display the certificate of licensure issued
16 by the division in plain view in its principal office and in
17 each branch office.

18 **§ -7 License to do business as a loan originator. (a)**

19 The commissioner shall receive and act on all loan originator
20 license applications. Prior to the processing of an
21 application, the commissioner may require that a criminal
22 history record check be performed on the applicant in accordance

1 with section 846-2.7, the fee to be paid by the applicant.
2 Applications shall be filed in the manner prescribed by the
3 commissioner, shall contain such information as the commissioner
4 may reasonably require, shall be updated as necessary to keep
5 the information current, and shall be accompanied by an
6 application fee of \$500, or such greater amount as the
7 commissioner shall establish by rule pursuant to chapter 91.
8 When an application for licensure is abandoned, denied or
9 withdrawn, the commissioner shall retain all fees paid by the
10 applicant.

11 (b) An application for license may be denied if the
12 commissioner finds that:

13 (1) The financial responsibility, character, and fitness
14 of the applicant are not such as to warrant belief
15 that the loan originator will operate honestly and
16 fairly within the purposes of this chapter;

17 (2) The applicant has been convicted of any felony or a
18 misdemeanor involving any aspect of the financial
19 services business, or a court has accepted a finding
20 of guilt on the part of the applicant of any felony or
21 a misdemeanor involving any aspect of the financial
22 services business;

- 1 (3) The applicant has had a license, substantially
2 equivalent to a license under this chapter and issued
3 by any state, that was denied, revoked or suspended
4 under the law of such state;
- 5 (4) The applicant has filed an application for a license
6 which is false or misleading with respect to any
7 material fact;
- 8 (5) The applicant has violated this chapter or any rule or
9 order lawfully made pursuant to this chapter;
- 10 (6) The applicant has violated any state or federal law,
11 rule or regulation pertaining to mortgage brokering,
12 mortgage lending, or loan origination activities set
13 forth in section -1;
- 14 (7) The applicant has failed to pass a written examination
15 established by the commissioner pursuant to section
16 -4; or
- 17 (8) The applicant has not provided information on the
18 application as reasonably required by the commissioner
19 pursuant to subsection (a).
- 20 (c) The commissioner is empowered to conduct any
21 investigation that the commissioner may deem necessary to

1 determine whether any of the circumstances set forth in
2 subsection (b) exist.

3 (d) In the event that the commissioner orders the denial
4 of the issuance or renewal of a license, the order shall be made
5 pursuant to chapter 91.

6 (e) Upon obtaining approval for a license, an initial
7 license fee shall be paid to the commissioner in the amount of
8 \$100 or such greater amount as the commissioner shall establish
9 by rule pursuant to chapter 91. A loan originator may transact
10 business only for a mortgage broker or mortgage lender licensed
11 in accordance with the provisions of this chapter. The original
12 license issued by the division to a loan originator shall be
13 provided to and be maintained by the mortgage broker or mortgage
14 lender at the mortgage broker's or lender's principal office. A
15 copy of the loan originator's license must be displayed at the
16 office where that loan originator principally transacts
17 business.

18 (f) Each license under this section shall remain in full
19 force and effect unless the licensee does not satisfy the
20 renewal requirements of this chapter, or the license is
21 relinquished, suspended or revoked.

1 (g) A loan originator licensed under this chapter shall
2 not engage in loan origination activities under any name other
3 than that on the license.

4 (h) The commissioner may suspend action upon a loan
5 originator license application pending resolution of any
6 criminal charges against an applicant before any court of
7 competent jurisdiction if that applicant's conviction would
8 disqualify the applicant.

9 (i) The commissioner may suspend action upon a loan
10 originator license application pending resolution of any civil
11 action or administrative proceeding against that applicant, if
12 the civil action or administrative proceeding involves any
13 aspect of a financial services business and the outcome could
14 disqualify the applicant.

15 (j) An applicant under this section shall make complete
16 disclosure of all information required in the application. An
17 applicant is not liable in any civil action other than a civil
18 action brought by a governmental agency, related to an alleged
19 untrue statement made pursuant to this section unless it is
20 shown by clear and convincing evidence that:

21 (1) The applicant knew at the time the statement was made
22 that it was false in any material respect; or

1 (2) The applicant acted in reckless disregard as to the
2 statement's truth or falsity.

3 **§ -8 License sanctions.** (a) In addition to any other
4 actions authorized by law, the commissioner may suspend, revoke,
5 deny, condition in any manner, or refuse to renew, reinstate, or
6 restore, any license issued under this chapter, or fine any
7 person holding a license issued under this chapter, for any
8 violation of this chapter.

9 (b) Any order of the commissioner may be appealed in
10 accordance with chapter 91.

11 **§ -9 Cease and desist orders; grounds for issuance.** (a)
12 Whenever it appears to the commissioner that any person has
13 engaged or is about to engage in any act or practice
14 constituting a violation of:

15 (1) This chapter; or

16 (2) A rule adopted or order issued under this chapter;
17 the commissioner may, in the commissioner's discretion, issue a
18 cease and desist order to enforce compliance with this chapter,
19 or with any rule adopted or order issued under this chapter.

20 The commissioner shall have the discretion to include in the
21 order an assessment of an administrative fine against any person
22 who violates this chapter.

1 **§ -10 Cease and desist orders; procedure; hearing;**
2 **enforcement.** (a) The notice of charges and proposed cease and
3 desist order shall be in writing and shall be served upon the
4 mortgage broker, mortgage lender, or loan originator at its
5 principal office in this State and upon any other affected party
6 wherever that person can be located and served by the
7 commissioner. The notice of charges shall state the alleged
8 violations or wrongful practices and a summary of the facts in
9 support of the allegations. The notice shall be accompanied by
10 a proposed order that states the commissioner's intent to
11 require discontinuance of the violation or practice and the
12 immediate compliance with all requirements of any applicable
13 agreement, conditions of approval, order, rule or law. The
14 proposed order may also direct affirmative action as may be
15 necessary to correct the alleged violation or wrongful practice.
16 The notice of charges shall set forth a time and place for a
17 hearing to determine whether the proposed order shall be issued.
18 (b) Within twenty days after service of a notice of
19 charges, unless an earlier date or later date is set by the
20 commissioner upon request of the affected party, the
21 commissioner or the commissioner's designee shall hold a hearing
22 in accordance with chapter 91. If no appearance is made at the

1 scheduled hearing by the party or its duly authorized
2 representative, the party shall be deemed to have consented to
3 the issuance of the cease and desist order, and the commissioner
4 may issue the order. Any cease and desist order issued after a
5 hearing held in accordance with this subsection shall become
6 effective after service upon the affected party and shall remain
7 effective until modified or terminated by the commissioner. Any
8 appeal of a cease and desist order shall be made to the circuit
9 court in accordance with chapter 91.

10 (c) On or after the effective date of any cease and desist
11 order, the commissioner may apply for enforcement of the order
12 to the circuit court. The application may also contain a
13 petition for such other relief or remedies as may be appropriate
14 in the circumstances.

15 **§ -11 Consent cease and desist orders.** Any affected
16 party may waive its rights to a hearing on any notice of charges
17 by stipulating and consenting to the issuance of a cease and
18 desist order. Any cease and desist order issued by consent
19 shall be effective as of the date specified therein and shall
20 remain effective until modified by consent or terminated by the
21 commissioner.

1 **§ -12 Revocation or suspension of a license.** (a) If
2 the commissioner has reason to believe that grounds exist for
3 revocation or suspension of a license, the commissioner may
4 initiate a contested case against a mortgage broker, mortgage
5 lender, or loan originator, and any officer, director, partner,
6 member, manager, employee, or agent whose activities constitute
7 the basis for revocation or suspension, in accordance with
8 chapter 91.

9 (b) The commissioner may, after proceedings pursuant to
10 chapter 91, suspend the license for a period not to exceed six
11 months, or revoke the license, if the commissioner finds that:

12 (1) The licensee or any officer, director, partner,
13 member, manager, employee, or agent of the licensee
14 has violated this chapter or any rule or order made
15 under this chapter; or

16 (2) The licensee or any officer, director, partner,
17 member, manager, employee, or agent of the licensee
18 has violated any state or federal law, rule or
19 regulation pertaining to mortgage brokering, mortgage
20 lending, or loan origination activities set forth in
21 section -1; or

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- 1 (3) Facts or conditions exist that would have justified
2 the commissioner in refusing to grant a license had
3 these facts or conditions been known to exist at the
4 time the license was issued; or
- 5 (4) The licensee or any officer, director, partner,
6 member, manager, employee, or agent of the licensee
7 has been convicted of any felony or a misdemeanor
8 involving any aspect of the financial services
9 business, or a court has accepted a finding of guilt
10 on the part of the licensee or officer, director,
11 partner, member, manager, employee, or agent of the
12 licensee, of any felony or a misdemeanor involving any
13 aspect of the financial services business; or
- 14 (5) The licensee or any officer, director, partner,
15 member, manager, employee, or agent of the licensee
16 has had a license substantially equivalent to a
17 license under this chapter, and issued by another
18 state, that was denied, revoked or suspended under the
19 laws of such state; or
- 20 (6) The licensee has filed an application for a license
21 which, as of the date the license was issued or as of
22 the date of an order denying, suspending or revoking a

1 license, was incomplete in any material respect or
2 contained any statement that was, in light of the
3 circumstances under which it was made, false or
4 misleading with respect to any material fact; or

5 (7) The mortgage broker or mortgage lender licensee has
6 employed, or has entered into a contractual
7 relationship with, any person who performs loan
8 origination activities for the licensee without first
9 obtaining a loan originator license under this
10 chapter; or

11 (8) The mortgage broker or mortgage lender licensee has
12 failed to notify the commissioner of the employment or
13 termination of, or the entering into or termination of
14 a contractual relationship with, a licensed loan
15 originator pursuant to section -19; or

16 (9) The mortgage broker or mortgage lender licensee has
17 failed to supervise diligently the mortgage related
18 activities of a loan originator employed by or in a
19 contractual relationship with the licensee.

20 (c) Any licensee may surrender the license by notifying
21 the division in writing of its surrender, but this surrender
22 shall not affect the licensee's liability for acts previously

1 committed, and may not occur after the filing of a notice of
2 hearing for revocation of the license.

3 (d) The commissioner shall have the discretion to
4 reinstate a license, terminate a suspension, or grant a new
5 license to a person whose license has been revoked or suspended
6 if no fact or condition then exists which would justify the
7 commissioner in refusing to grant a license.

8 **§ -13 Summary license suspension.** (a) Notwithstanding
9 any law to the contrary, the commissioner or the commissioner's
10 designee may cause the immediate suspension or restriction of a
11 license, subject to subsequent notice and hearing or other
12 adequate procedures, upon a specific determination that the
13 failure to take such an action may result in:

14 (1) An immediate and unreasonable threat to personal
15 safety; or

16 (2) Fraud or misrepresentation upon consumers, and that,
17 for the protection of the public from the possible
18 consequences, the license should be immediately
19 suspended or restricted.

20 (b) The commissioner or the commissioner's designee may
21 order the summary suspension of the license for a period not to
22 exceed twenty days. The order of suspension shall be served

1 upon the licensee at the same time as the notice of hearing for
2 disciplinary action, and the hearing shall be scheduled prior to
3 the expiration of the order of suspension. The period of
4 suspension prior to the hearing shall not be extended beyond
5 twenty days except upon request of the licensee for a reasonable
6 continuance of the hearing to adequately prepare the licensee's
7 defense. Any attempt by the licensee to engage in any licensed
8 activity while the license has been summarily suspended shall of
9 itself be sufficient to warrant a permanent revocation of the
10 license and shall subject the licensee to all penalties
11 prescribed by this chapter or by any rule or order of the
12 commissioner.

13 **§ -14 Borrowers' remedies not affected.** The grant of
14 powers to the commissioner in this chapter does not limit
15 remedies available to borrowers under this chapter or under
16 other principles of law or equity.

17 **§ -15 Bond requirement; claims against bond.** (a) Every
18 person licensed as a mortgage broker, mortgage lender, or loan
19 originator shall deposit with the commissioner, prior to doing
20 business, a bond in an amount of \$50,000, executed by the
21 licensed mortgage broker, mortgage lender, or loan originator as
22 principal and a surety company authorized to do business in this

1 State as a surety; provided that the commissioner, for good
2 cause shown, shall have the discretion to accept a bond executed
3 by a surety company that has not been authorized to do business
4 in this State as a surety. The bond shall be conditioned upon
5 the faithful compliance of the licensed mortgage broker,
6 mortgage lender, or loan originator with this chapter and the
7 rules adopted under this chapter. The bond shall run to the
8 State for the benefit of any person injured by any violation of
9 this chapter or the rules adopted under this chapter, by the
10 licensed mortgage broker, mortgage lender, or loan originator,
11 or by any officer, director, partner, member, manager, employee,
12 or agent of a licensed mortgage broker or mortgage lender;
13 provided that the aggregate liability of the surety shall not
14 exceed the sum of the bond. The surety may cancel the bond by
15 giving sixty days' notice in writing to the commissioner and
16 shall thereafter be relieved of any liability for any breach of
17 condition occurring after the effective date of cancellation. A
18 license shall cease to be effective at any time when the
19 required bond is 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 licensee that has
2 committed the violation.

3 (c) The remedies provided under this section are
4 cumulative and nonexclusive and do not affect any other remedy
5 available at law.

6 **§ -16 Continuing education.** (a) The commissioner may
7 adopt rules to require continuing education of licensees under
8 this chapter for the purpose of enhancing the professional
9 competence and the professional responsibility of all licensees.
10 The rules may include, but shall not be limited to, criteria for
11 the content of continuing education courses, the accreditation
12 of continuing education sponsors and programs, the computation
13 of continuing education credits, and general compliance with
14 this subsection.

15 (b) Continuing professional education requirements shall
16 be determined by the commissioner, provided that the
17 requirements shall not exceed twenty credit hours within a two
18 year period.

19 (c) The commissioner may require accredited sponsors of
20 continuing education programs to file information regarding the
21 contents and materials of proposed courses to satisfy the
22 education requirements, for the commissioner's review and

1 approval. The commissioner may set fees for the initial and
2 continuing review of courses for which credit hours will be
3 granted. The filing fee for the initial review of course
4 materials shall be \$500 per course offered, or such other amount
5 as the commissioner shall establish by rule pursuant to chapter
6 91. The fee for continued review of course materials shall be
7 \$250 a year per course offered, or such other amount as the
8 commissioner shall establish by rule pursuant to chapter 91.

9 **§ -17 Records.** (a) Every licensed mortgage broker and
10 mortgage lender shall maintain records, including financial
11 records, in conformity with generally accepted accounting
12 principles, in a manner that will enable the commissioner to
13 determine whether the mortgage broker or mortgage lender
14 licensee is complying with the provisions of this chapter.

15 (b) The licensed mortgage broker or mortgage lender shall
16 keep books and records in a safe and secure place in this State.
17 The commissioner may authorize such records to be maintained
18 outside this State.

19 (c) The records pertaining to any loan must be preserved
20 for a minimum of six years after making the final entry relating
21 to the loan.

1 § **-18 Renewal of licenses; annual reports.** (a) By
2 September 30 of each year, every mortgage broker and mortgage
3 lender licensed under this chapter shall pay an annual license
4 renewal fee of \$1,000, or such greater amount as the
5 commissioner shall establish by rule pursuant to chapter 91, and
6 file with the commissioner a renewal form containing such
7 information as the commissioner may require.

8 (b) By September 30 of each year, every loan originator
9 licensed under this chapter shall pay an annual license renewal
10 fee of \$250, or such greater amount as the commissioner shall
11 establish by rule pursuant to chapter 91, and file with the
12 commissioner a renewal form containing such information as the
13 commissioner may require.

14 § **-19 Duties regarding services of loan originator.** Any
15 mortgage broker or mortgage lender who employs or contracts with
16 a loan originator for the purpose of conducting loan origination
17 activities, shall:

18 (1) Notify the commissioner of the employment of, or
19 contractual relationship with, a loan originator
20 within thirty days of such employment or contract.
21 Notification shall be made in a manner prescribed by
22 the commissioner;

1 (2) Notify the commissioner of the termination of
2 employment of, or contractual relationship with, a
3 loan originator within thirty days of such
4 termination. Notification shall be made in a manner
5 prescribed by the commissioner; and

6 (3) Maintain any records relating to the employment of, or
7 contractual relationship with, a loan originator for a
8 period no less than six years from date of
9 termination.

10 § -20 **Examinations.** (a) The commissioner may conduct
11 examinations of licensed mortgage brokers, mortgage lenders, and
12 loan originators under this chapter at intervals that the
13 commissioner deems appropriate.

14 (b) The purpose of the examinations shall be to ensure
15 that the licensee is complying with all applicable laws and
16 rules.

17 (c) The commissioner shall have full access to the vaults,
18 books, accounts, records, and documents of the licensee and may
19 make any inquiries as may be necessary to ascertain the
20 condition and practices of the licensed mortgage broker,
21 mortgage lender, or loan originator. All officers, directors,
22 partners, members, managers, employees, and agents of the

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

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

15 **§ -21 Confidentiality of records.** (a) The commissioner
16 and all employees, contractors, attorneys contracted or employed
17 by the State, and appointees of the division of financial
18 institutions shall not divulge or furnish any information in
19 their possession or obtained by them in the course of their
20 official duties to persons outside the division, except to the
21 director of commerce and consumer affairs, and to administrators
22 of the uniform multistate automated licensing system, or unless

1 otherwise permitted by this section or any other law regulating
2 the licensees. The disclosures prohibited by this section shall
3 include, without limitation, information that is:

- 4 (1) Privileged or exempt from disclosure under any federal
5 or state law;
- 6 (2) Related to an examination performed by or on behalf of
7 the commissioner or contained in any report of
8 examination;
- 9 (3) Contained in any report submitted to, or for the use
10 of the commissioner, except for the nonproprietary
11 portions of applications;
- 12 (4) Related to the business, personal, or financial
13 affairs of any person and is furnished to, or for the
14 use of, the commissioner in confidence;
- 15 (5) Privileged or confidential and related to trade
16 secrets and commercial or financial information
17 obtained from a person;
- 18 (6) Obtained pursuant to any lawful investigation for the
19 purpose of enforcing the laws regulating licensees;
- 20 (7) Related solely to the internal personnel rules or
21 other internal practices of the commissioner;

1 (8) Contained in personnel, medical, and similar files,
2 including financial files, the disclosure of which
3 would constitute a clearly unwarranted invasion of
4 personal privacy; or

5 (9) Contained in inter-agency and intra-agency
6 communications, whether or not contained in written
7 memoranda, letters, tapes, or records, that would not
8 be routinely available by law to a private party,
9 including memoranda, reports, and other documents
10 prepared by the staff of the commissioner.

11 (b) Any information identified in subsection (a) is
12 confidential and not subject to subpoena or other legal process.

13 (c) The commissioner shall furnish a copy of each report
14 of examination to the licensee examined. The report and its
15 contents shall remain the property of the commissioner and shall
16 not be disclosed to any person who is not an officer, director,
17 partner, member, manager, employee, agent, authorized auditor,
18 attorney, other consultant, or advisor of the licensee. Any
19 person who has received the report from the licensee shall be
20 bound by the confidentiality provisions of this section. The
21 report and its contents shall not be subject to subpoena or
22 other legal process requiring disclosure.

1 (d) The commissioner may furnish reports of examination,
2 other information relating to the examination of a licensee, and
3 information relating to the supervision and regulation of a
4 licensee to:

5 (1) The governor, the attorney general, and heads of other
6 state governmental agencies having regulatory
7 authority over the licensee;

8 (2) Federal or state regulatory agencies if the requesting
9 agency agrees to use the information only for
10 functions directly related to the exercise of its
11 appropriate supervisory authority;

12 (3) Other agencies of the United States or a state for use
13 where necessary to investigate regulatory, civil or
14 criminal charges in connection with the affairs of any
15 licensee under the supervision of the commissioner;
16 and

17 (4) Administrators of the uniform multistate automated
18 licensing system for use in administering the uniform
19 multistate automated licensing system.

20 **§ -22 Restrictions on fees and charges.** (a) With the
21 exception of a loan cancellation fee, a licensee shall not

1 require a borrower to pay any fees or charges prior to a
2 residential mortgage loan closing, except:

- 3 (1) Charges actually incurred by the licensee on behalf of
4 the borrower for services that have been rendered by
5 third parties necessary to process the application.
6 These fees may include, but are not limited to, fees
7 for credit reports, flood insurance certifications,
8 property inspections, title insurance commitments,
9 lien or title searches, financing statement reports,
10 and appraisals;
- 11 (2) An application fee;
- 12 (3) A rate lock fee; and
- 13 (4) A commitment fee upon approval of the residential
14 mortgage loan.

15 (b) A loan cancellation fee may be charged and collected
16 by a licensee at any time either prior to the scheduled closing
17 of a residential mortgage loan transaction or subsequent
18 thereto.

19 **§ -23 Prohibited practices of mortgage brokers and**
20 **mortgage lenders.** No licensed mortgage broker or mortgage
21 lender, nor any person required under this chapter to have such
22 license shall:

- 1 (1) Obtain any exclusive dealing or exclusive agency
2 agreement from any borrower;
- 3 (2) Delay closing of any residential mortgage loan for the
4 purpose of increasing interest, costs, fees, or
5 charges payable by the borrower;
- 6 (3) Accept any fees at closing that were not previously
7 disclosed fully to the borrower;
- 8 (4) Obtain any agreement or instrument in which blanks are
9 left to be filled in after signing by a borrower;
- 10 (5) Engage in any misrepresentation in connection with a
11 residential mortgage loan;
- 12 (6) Make payment, whether directly or indirectly, of any
13 kind to any in-house or third-party appraiser for the
14 purpose of influencing the independent judgment of the
15 appraiser with respect to the value of any real estate
16 that is to be covered by a residential mortgage loan;
- 17 (7) Make any false promises likely to influence or
18 persuade, or pursue a course of misrepresentations or
19 false promises through loan originators or other
20 agents, or through advertising or otherwise;

- 1 (8) Misrepresent, circumvent or conceal, through whatever
2 subterfuge or device, any of the material facts
3 regarding a residential mortgage loan transaction; or
4 (9) Enter into any agreement, with or without the payment
5 of a fee, to fix in advance a particular interest rate
6 or other term in a residential mortgage loan unless
7 written confirmation of the agreement is delivered to
8 the borrower.

9 **§ -24 Prohibited practices of loan originators.** No
10 licensed loan originator, and no person required under this
11 chapter to have such license shall:

- 12 (1) Be employed simultaneously by more than one mortgage
13 broker or mortgage lender licensed under this chapter;
14 (2) Enter into concurrent contractual relationships for
15 delivery of loan origination services to more than one
16 licensee under this chapter;
17 (3) Obtain any exclusive dealing or exclusive agency
18 agreement from any borrower;
19 (4) Delay closing of any residential mortgage loan for the
20 purpose of increasing interest, costs, fees, or
21 charges payable by the borrower;

- 1 (5) Accept any fees at closing that were not previously
- 2 disclosed fully to the borrower;
- 3 (6) Obtain any agreement or instrument in which blanks are
- 4 left to be filled in after signing by a borrower;
- 5 (7) Engage in any misrepresentation in connection with a
- 6 residential mortgage loan;
- 7 (8) Make payment, whether directly or indirectly, of any
- 8 kind to any in-house or third-party appraiser for the
- 9 purpose of influencing the independent judgment of the
- 10 appraiser with respect to the value of any real estate
- 11 that is to be covered by a residential mortgage loan;
- 12 (9) Make any false promises likely to influence or
- 13 persuade, or pursue a course of misrepresentations or
- 14 false promises through mortgage brokers, mortgage
- 15 lenders, or other agents, or through advertising or
- 16 otherwise;
- 17 (10) Misrepresent, circumvent or conceal, through whatever
- 18 subterfuge or device, any of the material facts
- 19 regarding a residential mortgage loan transaction; or
- 20 (11) Enter into any agreement, with or without the payment
- 21 of a fee, to fix in advance a particular interest rate
- 22 or other term in a residential mortgage loan unless

1 written confirmation of the agreement is delivered to
2 the borrower.

3 **§ -25 Penalty.** (a) Any person who violates any
4 provision of this chapter or the rules adopted pursuant to this
5 chapter shall be subject to an administrative fine of not more
6 than \$5,000 for each violation.

7 (b) Any person who, in the course of engaging in conduct
8 that requires a license under this chapter, commits a violation
9 of this chapter or the rules adopted pursuant to this chapter,
10 and the violation includes conduct that is directed towards,
11 targets, or is committed against an elder, may be fined an
12 amount not to exceed \$10,000 for each violation in addition to
13 any other fine or penalty.

14 (c) As used in this chapter, "elder" means a consumer who
15 is sixty-two years of age or older."

16 SECTION 2. Section 454-3, Hawaii Revised Statutes, is
17 amended by amending subsection (e) to read as follows:

18 "(e) All fees shall be established and adopted by the
19 director in accordance with chapter 91 and shall be deposited
20 into the compliance resolution fund established pursuant to
21 section 26-9(o) [-]; provided that in order to establish
22 regulatory practices for residential mortgage lending, a

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1 surcharge of \$400 shall be charged to a mortgage broker renewing
2 a mortgage broker license and a surcharge of \$100 shall be
3 charged to a mortgage solicitor renewing a mortgage solicitor
4 license. Failure of any mortgage broker or mortgage solicitor
5 to pay the biennial renewal fee on or before December 31 of an
6 even-numbered year shall constitute an automatic forfeiture of
7 the license. The forfeited license may be restored; provided
8 that application for restoration is made within six months of
9 the forfeiture and a penalty fee is paid in addition to the
10 delinquent license fee. A licensee who fails to restore a
11 license as provided in this subsection shall apply as a new
12 applicant[-]; provided that, after January 1, 2011, a licensee
13 who fails to restore a license as provided in this subsection
14 shall apply as a new applicant under chapter _____."

15 SECTION 3. Section 846-2.7, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

- 17 "(b) Criminal history record checks may be conducted by:
- 18 (1) The department of health on operators of adult foster
19 homes or developmental disabilities domiciliary homes
20 and their employees, as provided by section 333F-22;
 - 21 (2) The department of health on prospective employees,
22 persons seeking to serve as providers, or

1 subcontractors in positions that place them in direct
2 contact with clients when providing non-witnessed
3 direct mental health services as provided by section
4 321-171.5;

5 (3) The department of health on all applicants for
6 licensure for, operators for, and prospective
7 employees, and volunteers at one or more of the
8 following: skilled nursing facility, intermediate
9 care facility, adult residential care home, expanded
10 adult residential care homes, assisted living
11 facility, home health agency, hospice, adult day
12 health center, special treatment facility, therapeutic
13 living program, intermediate care facility for the
14 mentally retarded, hospital, rural health center and
15 rehabilitation agency, and, in the case of any of the
16 above-related facilities operating in a private
17 residence, on any adult living in the facility other
18 than the client as provided by section 321-15.2;

19 (4) The department of education on employees, prospective
20 employees, and teacher trainees in any public school
21 in positions that necessitate close proximity to
22 children as provided by section 302A-601.5;

- 1 (5) The counties on employees and prospective employees
2 who may be in positions that place them in close
3 proximity to children in recreation or child care
4 programs and services;
- 5 (6) The county liquor commissions on applicants for liquor
6 licenses as provided by section 281-53.5;
- 7 (7) The department of human services on operators and
8 employees of child caring institutions, child placing
9 organizations, and foster boarding homes as provided
10 by section 346-17;
- 11 (8) The department of human services on prospective
12 adoptive parents as established under section 346-
13 19.7;
- 14 (9) The department of human services on applicants to
15 operate child care facilities, prospective employees
16 of the applicant, and new employees of the provider
17 after registration or licensure as provided by section
18 346-154;
- 19 (10) The department of human services on persons exempt
20 pursuant to section 346-152 to be eligible to provide
21 child care and receive child care subsidies as
22 provided by section 346-152.5;

- 1 (11) The department of human services on operators and
2 employees of home and community-based case management
3 agencies and operators and other adults, except for
4 adults in care, residing in foster family homes as
5 provided by section 346-335;
- 6 (12) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (13) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (14) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 353C-5;

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1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;

4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section 302C-
11 1;

12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section 302A-
15 601.5;

16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, dependent adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to

- 1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;
- 3 (20) The department of human services on licensed adult day
4 care center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 346-97;
- 7 (21) The department of human services on purchase of service
8 contracted and subcontracted service providers and
9 their employees serving clients of the adult and
10 community care services branch, as provided by section
11 346-97;
- 12 (22) The department of human services on foster grandparent
13 program, senior companion program, and respite
14 companion program participants as provided by section
15 346-97;
- 16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (42 U.S.C. §1396n(c)), as provided by
21 section 346-97; [~~and~~]

1 (24) The department of commerce and consumer affairs on the
2 applicant, or any of its officers, directors,
3 partners, members, managers, employees or agents, if
4 it is an applicant for a mortgage broker or mortgage
5 lender license, as provided by section -6;

6 (25) The department of commerce and consumer affairs on the
7 applicant for a loan originator license, as provided
8 by section -7; and

9 [~~+24~~] (26) Any other organization, entity, or the State,
10 its branches, political subdivisions, or agencies as
11 may be authorized by state law."

12 SECTION 4. After December 31, 2010, no new license shall
13 be issued and no license renewal shall be effected under chapter
14 454, Hawaii Revised Statutes. After December 31, 2010, a person
15 who would be regulated under this Act shall be required to be
16 licensed under this Act, except that a mortgage broker or
17 mortgage solicitor licensed under chapter 454 as of January 1,
18 2011, shall not be required to be licensed under this Act until
19 October 1, 2012, provided that:

20 (1) A mortgage broker or mortgage lender who files an
21 application for a license pursuant to this Act by
22 October 1, 2011, and whose application is determined

1 to be complete by the commissioner by December 31,
2 2011, shall be deemed in compliance with the licensing
3 provisions of this Act until such time as the license
4 is issued or denied by the commissioner; and

5 (2) A mortgage solicitor who files an application for a
6 license pursuant to this Act between March 1, 2012,
7 and April 30, 2012, and whose application is
8 determined to be complete by the commissioner by June
9 30, 2012, shall be deemed in compliance with the
10 licensing provisions of this Act until such time as
11 the license is issued or denied by the commissioner.

12 SECTION 5. A person licensed under this Act prior to
13 October 1, 2011, shall not be required to be licensed under
14 chapter 454, Hawaii Revised Statutes, and shall not be subject
15 to the provisions of that chapter upon the effective date of the
16 person's licensure under this Act; provided that this section
17 shall not affect rights and duties that matured, penalties that
18 were incurred, and proceedings that were begun, before the
19 effective date of the person's licensure under this Act.

20 SECTION 6. There is appropriated out of the compliance
21 resolution fund of the State of Hawaii the sum of \$140,000, or
22 so much thereof as may be necessary for fiscal year 2008-2009,

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1 to carry out the purposes of this Act, including the hiring of
2 one permanent clerical assistant and six permanent examiners,
3 exempt from chapter 76, Hawaii Revised Statutes, in the division
4 of financial institutions, to implement this Act. The sum
5 appropriated shall be expended by the department of commerce and
6 consumer affairs for the purposes of this Act.

7 SECTION 7. Chapter 454, Hawaii Revised Statutes, is
8 repealed; provided that the repeal does not affect rights and
9 duties that matured, penalties that were incurred, and
10 proceedings that were begun, before its repeal.

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on July 1, 2008;
14 provided that section 7 shall take effect on October 1, 2012.

15
16 INTRODUCED BY: Calvin K. King
17 BY REQUEST

JAN 22 2008

Report Title:

Residential Mortgage Practices

Description:

Repeals the law on Mortgage Brokers and Solicitors, chapter 454, Hawaii Revised Statutes, and replaces it with a statute that provides for more specialized regulation of residential mortgage brokers, residential mortgage lenders and residential loan originators by the Division of Financial Institutions.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO RESIDENTIAL MORTGAGE PRACTICES.

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, together with residential mortgage lenders and residential loan originators, by the Division of Financial Institutions (DFI) rather than the Professional & Vocational Licensing Division (PVL) and the Regulated Industries Complaints Office (RICO) 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 restrict its application to those who deal in residential mortgage loan transactions (brokers and originators of non-residential property mortgages will no longer be regulated), establish pre-licensing criminal history background checks and testing for applicants, mandate continuing education requirements, establish periodic examinations of licensees, and mandate a required bond of \$50,000 for each mortgage broker, mortgage lender, and loan originator. The State is authorized to join and participate in a uniform multistate automated licensing system for mortgage brokers, mortgage lenders and mortgage loan originators. These changes will serve to improve licensed residential mortgage broker, lender, and loan originator skill and experience levels and will better enable DFI to ensure that licensees do not engage in unfair, deceptive, or fraudulent practices.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS), amend sections 454-3(e) and 846-2.7(b), HRS, and repeal chapter 454, HRS.

JUSTIFICATION: Responsibility for the licensing and regulation of mortgage brokers and solicitors currently rests with PVL pursuant to chapters 436B and 454, HRS. The activities of residential mortgage lenders, brokers and loan originators 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 lending and 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 DFI, which is charged with overall supervision of the financial services industry in Hawaii, rather than dividing this responsibility between three agencies (DFI, PVL, and RICO) as is presently the case.

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

The Commissioner of Financial Institutions ("Commissioner") is authorized to establish application requirements, which may include a criminal history background check and a written examination of the applicant. The State will be authorized to participate in a uniform multistate automated licensing system now being implemented in other states, which will expedite licensing procedures while enhancing consumer protection through shared information among the

participating states about license applicants.

A provision allows the Commissioner to adopt rules for the continuing education of licensees, including content criteria for courses, accreditation of continuing education providers and programs and the computation of continuing education credits.

Comprehensive recordkeeping requirements are established and provide for a six-year record retention period.

The bill authorizes DFI to examine licensees and provides for the confidentiality of all examination related information.

This bill mandates compliance with applicable federal and state laws related to mortgage brokering, lending, and loan origination.

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

A provision establishes a fine of not more than \$5,000 per violation for any violation of the chapter.

The proposed effective date of the bill, if enacted, is July 1, 2008; however, due to the substantial number of anticipated licensees under this measure, the delays inherent in drafting and adopting new administrative rules, and the need to hire and train personnel to administer

a new DFI regulatory program, it is proposed that existing licensees under chapter 454, HRS, shall not be required to be licensed under this measure until October 1, 2012, with a provision that will enable mortgage brokers and mortgage lenders to acquire their licenses before mortgage originators are required to apply for licensing and to indicate the name of the licensed mortgage broker or mortgage lender with which they will be working exclusively.

Impact on the public: Upon enactment of this measure, regulation of residential mortgage brokers, mortgage lenders, and loan originators 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 industry, will receive more consistent treatment with respect to applications, inquiries, regulation, complaints, and enforcement.

Impact on the department and other agencies: Additional regulatory and administrative functions to be assumed by DFI will entail the addition of 1 permanent clerical position and 6 permanent examiner positions to provide licensing, examination, and supervisory oversight.

GENERAL FUND:

None.

OTHER FUNDS:

Compliance Resolution Fund: \$140,000 for fiscal year 2008-2009.

PVL's mortgage broker program, which registers all mortgage brokers and mortgage solicitors, generated approximately \$384,626 in FY 2004-2005 when the biennial licenses were renewed, and \$218,237 in FY 2005-2006.

PVL's revenues would be impacted by the repeal of chapter 454.

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, 2008; except for section 7, which
will be effective October 1, 2012.