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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 title 22 to be appropriately designated  
3 and to read as follows:

4 **"CHAPTER**

5 **MORTGAGE BROKERS AND LOAN ORIGINATORS**

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  
10 control.

11 "Applicant" means a person applying for the issuance of a  
12 license or a renewal of a license under this chapter.

13 "Bank" means the same as in 12 U.S.C. section 1813(a), and  
14 includes a depository financial services loan company.

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



1 "Commissioner" means the commissioner of financial  
2 institutions of this State.

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

5 "Institutional investor" means:

- 6 (1) An insured depository institution;
- 7 (2) A real estate trust as defined in the Internal Revenue  
8 Code;
- 9 (3) An insurance company;
- 10 (4) The trustee of any employee benefit plan;
- 11 (5) A trust company chartered and examined under state  
12 law;
- 13 (6) An investment company as defined in the Investment  
14 Company Act of 1940;
- 15 (7) A retirement plan, or pension or profit sharing plan  
16 that is subject to the Employee Retirement Income  
17 Security Act;
- 18 (8) A housing government sponsored enterprise that is  
19 subject to the oversight of the Office of Federal  
20 Housing Enterprise Oversight; and
- 21 (9) The United States or any foreign government, any state  
22 or territory thereof, or any agency or corporate or



1           other instrumentality of the United States, a foreign  
2           government, or of any state, territory, or political  
3           subdivision thereof.

4           "Insured depository institution" means the same as in 12  
5 U.S.C. section 1813(c)(2), and includes an operating subsidiary  
6 of the insured depository institution that is an operating  
7 subsidiary under the laws and rules applicable to the insured  
8 depository institution.

9           "Licensee" means a person licensed pursuant to this  
10 chapter.

11           "Loan originator" means an individual, other than an exempt  
12 person, who performs the loan origination activities described  
13 in this chapter with respect to a residential mortgage loan.  
14 For the purposes of this chapter, the term "loan originator"  
15 does not include persons who are mortgage brokers.

16           "Loan origination activities" means engaging in any of the  
17 following activities for direct or indirect compensation or  
18 gain, while representing or acting on behalf of a mortgage  
19 broker:

20           (1) Soliciting, accepting, or offering to accept an  
21           application for a residential mortgage loan;



1           (2)   Assisting a borrower or offering to assist a borrower  
2                   in the preparation of a residential mortgage loan  
3                   application; or

4           (3)   Negotiating or offering to negotiate the terms or  
5                   conditions of a residential mortgage loan with a  
6                   borrower.

7           "Mortgage broker" means any person, other than an exempt  
8 person, who performs the mortgage brokering activities described  
9 in this chapter with respect to a residential mortgage loan.

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

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

15           (2)   Assisting or offering to assist in the preparation of  
16                   an application for a residential mortgage loan; or

17           (3)   Negotiating or offering to negotiate the terms or  
18                   conditions of a residential mortgage loan.

19           "Mortgage brokerage agreement" means a written agreement in  
20 which a mortgage broker agrees to obtain a residential mortgage  
21 loan for the borrower or assist the borrower in obtaining a  
22 residential mortgage loan, and does not include a promissory



1 note and mortgage, or any other document or instrument  
2 evidencing or securing the mortgage loan.

3 "Mortgage brokerage firm" means a mortgage broker licensee  
4 that is not an individual or sole proprietorship.

5 "Person" means an individual, sole proprietorship,  
6 partnership, corporation, limited liability company, limited  
7 liability partnership, or other association of individuals,  
8 however organized.

9 "Principal mortgage broker" means an individual mortgage  
10 broker licensee under this chapter, designated as such pursuant  
11 to section -6, who has the duty to directly manage and  
12 supervise a mortgage brokerage firm and its licensees.

13 "Residential mortgage loan" means any loan, including a  
14 loan to refinance a residential mortgage loan, secured primarily  
15 by a lien on residential real property, the proceeds of which  
16 loan will be used primarily for personal, family or household  
17 use.

18 "Residential real property" means:

19 (1) Real property located in this State that is improved  
20 or will be improved by the proceeds of the mortgage  
21 loan by a structure or structures designed principally  
22 for occupancy of one to four families, including



1 individual units of condominiums and cooperatives, and  
2 any related interests, such as a share in the  
3 cooperative or right to occupancy of the unit; or

4 (2) A manufactured home used primarily for occupancy by  
5 one to four families.

6 "Savings association" means the same as in 12 U.S.C.  
7 section 1813(b).

8 "Uniform multistate automated licensing system" means a  
9 system that may involve one or more states, the District of  
10 Columbia, Territory of Guam, or the Commonwealth of Puerto Rico  
11 established to facilitate the sharing of regulatory information  
12 and the licensing and application processes, by electronic or  
13 other means, for mortgage brokers and loan originators.

14 § -2 **Exemptions.** This chapter does not apply to the  
15 following:

16 (1) Any person that is licensed or chartered or authorized  
17 under the laws of any state or federal law to engage  
18 in the activity of an insured depository institution,  
19 including a bank or savings association, and any  
20 employee of an insured depository institution;



- 1           (2) Any of the following persons licensed or chartered  
2                   under the laws of any state or federal law to do  
3                   business as:
- 4                   (A) A credit union;
  - 5                   (B) A wholly owned subsidiary of an insured  
6                   depository institution; provided that the  
7                   subsidiary is regularly examined by the licensing  
8                   or chartering state or federal agency for  
9                   consumer compliance;
  - 10                  (C) A trust company;
  - 11                  (D) An insurance company;
  - 12                  (E) A financial services loan company; or
  - 13                  (F) A federally licensed small business investment  
14                  company,
  - 15                  including any employee of these companies;
- 16           (3) An individual who is an exclusive agent of a single  
17                   bank or savings association;
- 18           (4) A person making or acquiring a residential mortgage  
19                   loan with the person's own funds for the person's own  
20                   investment without intent to resell the residential  
21                   mortgage loan;



- 1           (5) A person licensed to practice law in the State, not  
2           actively and principally engaged in the business of  
3           negotiating residential mortgage loans, when the  
4           person renders services in the course of the person's  
5           practice as an attorney;
- 6           (6) A person licensed as a real estate broker or  
7           salesperson in the State, not actively engaged in the  
8           business of negotiating residential mortgage loans,  
9           when the person renders services in the course of the  
10          person's practice as a real estate broker or  
11          salesperson;
- 12          (7) An institutional investor negotiating, entering into,  
13          or performing under a residential mortgage loan  
14          purchase agreement for its portfolio, for subsequent  
15          resale to other institutional investors, or for  
16          placement of the residential mortgage loans into pools  
17          or packaging them into mortgage-backed securities. As  
18          used in this paragraph, "residential mortgage loan  
19          purchase agreement" means an agreement or arrangement  
20          under which an insured depository institution, credit  
21          union, financial services loan company, or other  
22          financial institution authorized to do business in the





1 State agrees to sell residential mortgage loans or  
2 obtain funding therefor, with or without the transfer  
3 of servicing rights, to an institutional investor;

4 (8) A person licensed under chapter 467 as a real estate  
5 broker or salesperson selling time share interests as  
6 an authorized representative of, and on behalf of a  
7 time share plan developer that is licensed as a  
8 mortgage broker under this chapter; provided that:

9 (A) The acts or conduct of a developer's authorized  
10 representative shall be deemed to be the acts or  
11 conduct of the developer for the purposes of  
12 sections -17 and -19; and

13 (B) If the person engages in acts or conduct  
14 prohibited under this chapter, the acts or  
15 conduct shall constitute grounds for disciplinary  
16 action under section 467-14; and

17 (9) Persons employed by, or who contract with a licensee  
18 under this chapter to perform only clerical or  
19 administrative functions on behalf of such licensee,  
20 and who do not solicit borrowers or negotiate the  
21 terms of residential mortgage loans.



1           **§ -3 Requirement of licensure.** No person required to be  
2 licensed under this chapter shall act, attempt to act, or hold  
3 oneself out as or otherwise engage in the activity of a mortgage  
4 broker or loan originator without a license as provided in this  
5 chapter, and no person not licensed under this chapter shall  
6 charge or receive any commission, fee, or bonus in connection  
7 with arranging for, negotiating, or selling a residential  
8 mortgage loan.

9           **§ -4 Engaging in activities of a loan originator.** A  
10 loan originator may not engage in the activity of a loan  
11 originator unless licensed under this chapter and under the  
12 control, direction, and supervision of a mortgage broker  
13 licensee or a principal mortgage broker in a mortgage broker  
14 firm.

15           **§ -5 Principal mortgage broker.** (a) A principal  
16 mortgage broker shall have the duty to directly manage and  
17 supervise a mortgage brokerage firm and its licensees.  
18           (b) A principal mortgage broker shall be responsible for:  
19           (1) Supervising the maintenance of client trust accounts,  
20           the disbursements from those accounts, and the  
21           accounting practices of the mortgage brokerage firm;



- 1           (2)   Supervising the maintenance of the records, contracts,  
2                   and documents of the mortgage brokerage firm;
- 3           (3)   Supervising all mortgage brokerage agreements and  
4                   mortgage loan documents of the mortgage brokerage firm  
5                   and the handling of these documents by the licensees  
6                   of the mortgage brokerage firm;
- 7           (4)   Supervising any licensee of the mortgage brokerage  
8                   firm;
- 9           (5)   Developing policies and procedures for the mortgage  
10                   brokerage firm relating to the handling of residential  
11                   mortgage loan transactions and the conduct of the  
12                   licensees and other staff, and educating and enforcing  
13                   these policies and procedures;
- 14           (6)   Setting a policy on continuing education requirements  
15                   for all licensees of the mortgage brokerage firm to be  
16                   in compliance with any statutory or rule requirements;
- 17           (7)   Ensuring that the licenses of all licensees and the  
18                   license of the mortgage brokerage firm are current and  
19                   active, and any required bond is valid and not  
20                   cancelled;
- 21           (8)   Establishing and maintaining a training program for  
22                   all licensees of the mortgage brokerage firm;



1           (9) Ensuring that all licensees of the mortgage brokerage  
2           firm are provided adequate information and training on  
3           the latest amendments to licensing laws and rules, and  
4           any other related laws and rules;

5           (10) Notifying the commissioner within ten days of any  
6           licensee who commences or terminates a relationship  
7           with the mortgage brokerage firm; and

8           (11) Ensuring that the records, agreements, including the  
9           mortgage brokerage agreement, and loan documents are  
10          retained for seven years in paper or electronic format  
11          by the mortgage brokerage firm.

12          §   -6 **Mortgage broker licensing requirements.** (a) If  
13          the applicant is other than an individual, no license shall be  
14          granted unless the applicant first registers to do business in  
15          this State with the business registration division of the  
16          department of commerce and consumer affairs, and has designated  
17          in the application the name of the individual who holds a  
18          mortgage broker license as the principal mortgage broker for the  
19          mortgage brokerage firm. A foreign lender conducting business  
20          in accordance with part II of chapter 207 is not required to  
21          register pursuant to this section. The designated principal  
22          mortgage broker shall have two years of experience as a mortgage



1 broker, and shall have management and supervision  
2 responsibilities over the mortgage brokerage firm as well as the  
3 mortgage brokerage firm's licensees.

4 (b) If the applicant for a mortgage broker license is a  
5 sole proprietorship individual, upon licensure, the individual  
6 mortgage broker shall have two years experience in residential  
7 mortgage lending and shall perform the duties of a principal  
8 mortgage broker under section -5.

9 § -7 Pre-license written examination. (a) For a  
10 mortgage broker license, the individual applicant or the  
11 designated principal mortgage broker shall pass a written  
12 examination prior to licensure. For a loan originator license,  
13 the individual applicant shall pass a written examination prior  
14 to licensure.

15 (b) The commissioner shall determine the examination  
16 score, which all applicants must receive to pass the written  
17 examination. The examination shall test the knowledge of the  
18 applicant concerning a residential mortgage loan transaction,  
19 the residential mortgage loan laws and rules of the State and  
20 relevant federal statutes, and the duties and responsibilities  
21 of a principal mortgage broker, mortgage broker, or loan  
22 originator, as appropriate.



1 (c) The commissioner may make arrangements, including  
2 contracting with an outside testing service, for administering  
3 examinations and collecting fees. The fees collected shall be  
4 nonrefundable. An applicant who fails to appear for the  
5 examination as scheduled or fails to pass the examination shall  
6 reapply for an examination and remit all required fees and forms  
7 before being rescheduled for another examination. An  
8 applicant's examination scores shall be valid for two years from  
9 the date of the examination.

10 § -8 Continuing education for licensees. (a) An  
11 applicant for a renewal of a license shall certify on a form  
12 provided by the commissioner that the licensee or the designated  
13 principal mortgage broker for a mortgage broker licensee that is  
14 not an individual has completed six hours for a mortgage broker  
15 license or four hours for a loan originator license of  
16 continuing education or its equivalent as determined by the  
17 commissioner during the one-year period preceding the  
18 application for renewal. The certification shall be under oath,  
19 if required by the commissioner. In addition to the  
20 certification, the commissioner may require any licensee to  
21 submit further evidence satisfactory to the commissioner  
22 demonstrating compliance with this section. Upon failure to



1 satisfy the continuing education requirement by the license  
2 expiration date, the renewed license shall be placed on inactive  
3 status.

4 (b) The course of study for continuing education shall be  
5 approved by the National Association of Mortgage Brokers or any  
6 other course of study approved by the commissioner, and shall  
7 include instruction on primary and subordinate residential  
8 mortgage loan transactions and the appropriate laws governing  
9 these transactions, including at least three hours of  
10 instruction in compliance with federal and state regulations of  
11 mortgage loans and at least one hours in business ethics for a  
12 license, except that the commissioner may adjust the required  
13 hours and course work to comply with any federal law on  
14 continuing education for mortgage brokers and loan originators.

15 (c) To reactivate a license that has been placed on an  
16 inactive status for failure to complete the required continuing  
17 education courses, the licensee shall submit to the  
18 commissioner:

19 (1) Proof of having satisfied the continuing education  
20 requirement of this section;



1           (2) An application to reactivate the license setting forth  
2           the information as may be prescribed or required by  
3           the commissioner; and

4           (3) Payment of the proper reactivation fee.

5           (d) A false certification to the commissioner shall be  
6 deemed a violation and shall subject the licensee to  
7 disciplinary proceedings, including denial of the application  
8 for renewal of the license. Within sixty days after receipt of  
9 notification of the forfeiture, a licensee may request an  
10 administrative hearing pursuant to chapter 91 to review the  
11 forfeiture.

12           § -9 **Bonding requirements.** (a) Every person licensed  
13 as a mortgage broker, except an individual mortgage broker who  
14 is under the direct management and supervision of another  
15 licensed mortgage broker and is covered by the bond of the other  
16 licensed mortgage broker, shall deposit with the commissioner,  
17 prior to doing business, a bond in the amounts set forth below  
18 and executed by the mortgage broker as principal and a surety  
19 company authorized to do business in the State as a surety:

20           (1) A sole proprietorship or a mortgage brokerage firm  
21           with one to five mortgage brokers or loan originators  
22           shall post a bond in the amount of \$25,000;





1           (2) A mortgage brokerage firm with six to ten mortgage  
2           brokers or loan originators shall post a bond in the  
3           amount of \$50,000; and

4           (3) A mortgage brokerage firm with eleven or more mortgage  
5           brokers or loan originators shall post a bond in the  
6           amount of \$75,000.

7           (b) The bond shall be conditioned upon the faithful  
8           compliance of the mortgage broker and any of its mortgage  
9           brokers or loan originators with this chapter and the rules  
10          adopted under this chapter. The bond shall run to the State for  
11          the benefit of any person injured by the wrongful act, default,  
12          fraud, or misrepresentation of the mortgage broker or its  
13          mortgage brokers or loan originators; provided that the  
14          aggregate liability of the surety shall not exceed the sum of  
15          the bond. The surety may cancel the bond by giving sixty days'  
16          prior notice in writing to the commissioner and shall thereafter  
17          be relieved of any liability for any breach of condition  
18          occurring after the effective date of cancellation. A mortgage  
19          broker license and the licenses of any of its mortgage brokers  
20          and its loan originators shall not be in effect at any time when  
21          the bond is not in full force and effect.



1 (c) The failure, refusal, or neglect of a licensee to  
2 maintain the applicable bond in full force and effect shall  
3 cause the forfeiture of the license, effective as of the date of  
4 expiration or cancellation of the bond. The commissioner shall  
5 not restore any forfeited license until satisfactory proof of  
6 bonding is submitted to the commissioner, as required by this  
7 section. Failure to submit proof sufficient to restore a  
8 license within sixty days after the date of forfeiture shall  
9 result in the forfeiture of all fees and shall require the  
10 licensee to apply as a new applicant.

11 § -10 Application. (a) Each application for a mortgage  
12 broker or loan originator license shall be made in writing, on  
13 the forms and in the manner and accompanied by evidence in  
14 support of the application as prescribed by the commissioner.  
15 Applications shall be accompanied by an application fee of  
16 \$2,000 in the case of a mortgage broker or \$500 in the case of a  
17 loan originator, or an amount as the commissioner shall  
18 establish by rule pursuant to chapter 91.

19 (b) When an application for licensure is abandoned,  
20 denied, or withdrawn, the commissioner shall retain all fees  
21 paid by the applicant.



1 (c) The commissioner shall require information with regard  
2 to the applicant as the commissioner may deem desirable, with  
3 due regard to the paramount interests of the public, as to the  
4 experience, financial integrity, and competency of the applicant  
5 as to financial transactions involving primary or subordinate  
6 residential mortgage financing.

7 (d) Upon obtaining approval for a license, an initial  
8 license fee shall be paid to the commissioner in the amount of  
9 \$100 or such other amount as the commissioner shall establish by  
10 rule pursuant to chapter 91. Each license under this section  
11 shall remain in full force and effect unless the licensee does  
12 not satisfy the renewal requirements of this chapter, or the  
13 license is relinquished, suspended, forfeited or revoked.

14 (e) An application for license may be denied if the  
15 commissioner finds that:

16 (1) The financial responsibility, character, and fitness  
17 of the applicant, or of the officers and directors if  
18 the applicant is a corporation, the partners if the  
19 applicant is a partnership, the members or managers if  
20 the applicant is a limited liability company, or the  
21 designated principal mortgage broker are not such as  
22 to warrant belief that the business will be operated



- 1           honestly and fairly within the purposes of this  
2           chapter;
- 3           (2) The designated principal mortgage broker in charge of  
4           each of the applicant's places of business does not  
5           have a minimum of two years' experience in residential  
6           mortgage lending;
- 7           (3) The applicant has been convicted of a crime involving  
8           dishonesty;
- 9           (4) The applicant has had a license, substantially  
10          equivalent to a license under this chapter and issued  
11          by any state or jurisdiction under the control of the  
12          United States, that was denied, revoked or suspended  
13          under the laws of such state or jurisdiction under the  
14          control of the United States;
- 15          (5) The applicant has filed an application for a license  
16          that is false or misleading with respect to any  
17          material fact;
- 18          (6) The applicant or any officer, director, partner,  
19          member, manager, employee, or agent of the applicant  
20          has violated this chapter or any rule or order  
21          lawfully made pursuant to this chapter;



1           (7) The applicant or any officer, director, partner,  
2           member, manager, employee, or agent of the applicant  
3           has violated any state or federal law, rule, or  
4           regulation pertaining to residential mortgage loans;

5           (8) The applicant or in the case of an applicant that is  
6           not an individual or sole proprietorship, the  
7           applicant's designated principal mortgage broker has  
8           failed to pass a written examination established by  
9           the commissioner; or

10          (9) The applicant has not provided information on the  
11          application as required by the commissioner.

12          (f) The commissioner is empowered to conduct any  
13          investigation that the commissioner may deem necessary to  
14          determine whether any of the circumstances set forth in  
15          subsection (e) exist.

16          (g) If the commissioner orders the denial of the issuance  
17          of a license, the order shall be made pursuant to chapter 91.

18          (h) The commissioner may suspend action upon a mortgage  
19          broker or loan originator license application pending resolution  
20          of any criminal charges against an applicant before any court of  
21          competent jurisdiction if that applicant's conviction would  
22          disqualify the applicant.



1 (i) The commissioner may suspend action upon a mortgage  
2 broker or loan originator license application pending resolution  
3 of any civil action or administrative proceeding against an  
4 applicant if the civil action or administrative proceeding  
5 involves any aspect of a financial services business and the  
6 outcome could disqualify the applicant.

7 **§ -11 Principal office; branches.** (a) Each mortgage  
8 broker shall display the certificate of license issued by the  
9 commissioner in plain view in its principal office, except a  
10 mortgage broker who is a foreign lender conducting business in  
11 accordance with part II of chapter 207, who is not required to  
12 have an office in Hawaii, shall not be required to display the  
13 certificate of license. Upon request, a mortgage broker shall  
14 make available for inspection the mortgage broker's license and  
15 the licenses of any of its mortgage brokers or loan originators.

16 (b) The commissioner may, on application, issue branch  
17 licenses to a mortgage broker licensee upon compliance with all  
18 the provisions of this chapter. Applications shall be filed in  
19 the manner prescribed by the commissioner, shall contain any  
20 information as the commissioner may reasonably require,  
21 including the name of the licensed mortgage broker in charge of  
22 the branch who has two years of experience as a mortgage broker.



1 The application shall be accompanied by an application fee of  
2 \$500 or such other amount as the commissioner shall establish by  
3 rule pursuant to chapter 91. Upon obtaining approval for a  
4 license for a branch office, an initial license fee for each  
5 branch office shall be paid to the commissioner in the amount of  
6 \$100 or an amount as the commissioner shall establish by rule  
7 pursuant to chapter 91. A separate branch license shall be  
8 required for each place of business from which mortgage  
9 brokering activities are conducted.

10 (c) The licensee shall give the commissioner written  
11 notice at least fifteen days before the effective date of any  
12 change in its designated principal mortgage broker or mortgage  
13 broker in charge of any branch, or within thirty days of an  
14 unanticipated vacancy. The notice shall contain the effective  
15 date of the change, and the name of the successor designated  
16 principal mortgage broker or mortgage broker in charge of the  
17 branch.

18 (d) No licensee shall change the location of any place of  
19 business, or consolidate two or more locations, without giving  
20 the commissioner at least thirty days' prior written notice.

21 (e) A licensee under this section shall give written  
22 notice to the commissioner within five days of the closure of



1 any branch location licensed under this chapter. Written notice  
2 of the closure of a branch office location shall include a  
3 detailed explanation of the disposition of all files and records  
4 and the original branch license.

5       **§ -12 Renewal of licenses; annual reports.** (a) By  
6 December 31 of each year, every mortgage broker and loan  
7 originator licensed under this chapter shall pay an annual  
8 license renewal fee of \$1,000 in the case of mortgage brokers  
9 and \$250 in the case of loan originators, or amounts as the  
10 commissioner shall establish by rule pursuant to chapter 91, and  
11 file with the commissioner a renewal form containing such  
12 information as the commissioner may require.

13       (b) If the commissioner orders denial of the renewal of a  
14 license, the order shall be made pursuant to chapter 91.

15       **§ -13 Uniform multistate automated licensing system.**

16 (a) The legislature has determined that participation in a  
17 uniform multistate automated licensing system for mortgage  
18 brokers and individual loan originators is consistent with both  
19 the public interest and the purposes of this chapter. For the  
20 sole purpose of participating in the establishment and  
21 implementation of a multistate automated licensing system for





1 mortgage brokers and loan originators, the commissioner is  
2 authorized:

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

4 (2) To establish by rule such new requirements as are  
5 necessary for the State to participate in a multistate  
6 automated licensing system upon the commissioner's  
7 finding that each new requirement is consistent with  
8 both the public interest and the purposes of this  
9 chapter; and

10 (3) To request a criminal history record check of the  
11 applicant or the applicant's officers, directors,  
12 partners, members, managers, employees, or agents in  
13 accordance with section 846-2.7 at such time as this  
14 State joins a multistate automated licensing system  
15 for mortgage brokers and loan originators pursuant to  
16 this section. The information obtained thereby may be  
17 used by the commissioner to determine the applicant's  
18 eligibility for licensing under this chapter. The fee  
19 required to perform the criminal history record check  
20 shall be paid by the applicant. Information obtained  
21 or held by the commissioner pursuant to this paragraph  
22 shall be considered confidential personal information



1 and shall be exempt from disclosure. This paragraph  
2 does not preclude the commissioner from obtaining  
3 criminal history record checks on applicants for  
4 mortgage brokers and loan originators prior to the  
5 time this State joins the multistate system.

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

11 **§ -14 Written agreements.** For any transaction between a  
12 mortgage broker or a loan originator and a borrower, the  
13 following requirements shall apply:

14 (1) A mortgage broker and a loan originator shall comply  
15 with all provisions of the Real Estate Settlement  
16 Procedures Act, the Truth in Lending Act, and the  
17 Equal Credit Opportunity Act, as those laws currently  
18 exist or as they may be amended;

19 (2) Any written commitment letter to make a residential  
20 mortgage loan with specified terms, including loan  
21 amount, interest rate, points, and payment terms,  
22 which is issued by a mortgage broker and accepted by a



1 borrower, shall be honored by the mortgage broker if  
2 the borrower has completely satisfied all of the  
3 conditions of the commitment in a timely manner and  
4 prior to the specified expiration date of the  
5 commitment. A loan originator may not issue a written  
6 commitment letter. A written commitment letter shall  
7 specify the conditions precedent to closing the  
8 residential mortgage loan and the lender, which has  
9 the ultimate authority to fund and close the mortgage  
10 loan;

- 11 (3) A mortgage broker or loan originator shall provide the  
12 borrower with the following notice (or substantially  
13 similar notice) of the borrower's rights and  
14 obligations, not longer than one page in length and in  
15 twelve-point font, regarding the terms of the  
16 residential mortgage loan transaction not later than  
17 the time the notice is required under the notice  
18 provision contained in 12 C.F.R. section 226.31(c), as  
19 amended:

20 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

21 You are not required to complete this

22 agreement merely because you have signed a loan



1 application. If you obtain this loan, the lender  
2 will have a mortgage on your home. You could  
3 lose your home, and any money you have put into  
4 it, if you do not meet your obligations.

5 If you are uncertain about your rights and  
6 obligations under this agreement, you should  
7 consider consulting a qualified independent  
8 housing counselor or other experienced financial  
9 adviser regarding the rate, fees, and provisions  
10 of this mortgage loan before you proceed. For  
11 information on contacting a qualified housing  
12 counselor, call the United States Department of  
13 Housing and Urban Development's counseling and  
14 referral line or its website for a list of  
15 housing counseling agencies."

16 The mortgage broker or loan originator shall provide  
17 the notice to the borrower and shall secure a signed  
18 acknowledgement of receipt by the borrower of a copy  
19 of the notice. The notice requirements of this  
20 paragraph shall not apply when a similar disclosure is  
21 required under federal law, including but not limited  
22 to home equity loans and high cost loans under the



1 Home Ownership and Equity Protection Act of 15 U.S.C.  
2 section 1639; and

3 (4) Within three business days of receipt of a borrower's  
4 completed residential mortgage loan application by the  
5 licensee, and before the borrower gives the licensee  
6 any moneys except for an application fee, the licensee  
7 shall sign a mortgage brokerage agreement with the  
8 borrower. The mortgage brokerage agreement shall be  
9 with the mortgage broker employing the mortgage broker  
10 or loan originator. The mortgage brokerage agreement  
11 shall be in writing, and signed and dated by both the  
12 borrower and the licensee. The mortgage brokerage  
13 agreement shall include a clear and conspicuous  
14 statement:

15 (A) Explaining that a copy shall be made available,  
16 upon request, to the borrower or the borrower's  
17 attorney for review prior to signing;

18 (B) Explaining whether the licensee is a fiduciary  
19 for the borrower;

20 (C) Explaining the nature of the licensee's  
21 compensation, and if the licensee is a loan  
22 originator, explaining the compensation of the



1 mortgage brokerage firm that the loan originator  
2 is employed by, and whether the mortgage broker  
3 and loan originator may receive compensation from  
4 the borrower, the lender, or both;

5 (D) Describing the services the licensee will perform  
6 for the borrower;

7 (E) Setting forth the conditions under which the  
8 borrower is obligated to pay fees to the  
9 licensee; the manner in which the borrower may  
10 cancel the mortgage brokerage agreement; the  
11 borrower's liabilities for fees and costs; and  
12 the mortgage broker's contact information for  
13 dispute resolution; or

14 (F) If the licensee makes materially false or  
15 misleading statements or omissions in the  
16 mortgage brokerage agreement, explaining that the  
17 borrower, upon written notice, may:

18 (i) Void the mortgage brokerage agreement;

19 (ii) Recover moneys paid to the licensed mortgage  
20 broker and loan originator by the borrower  
21 for which no services have been performed;  
22 and



1 (iii) Recover actual costs, including attorney  
2 fees, for enforcing the borrower's rights  
3 under the mortgage brokerage agreement.

4 A copy of the fully signed mortgage brokerage  
5 agreement shall be given to the borrower by the  
6 mortgage broker or loan originator immediately after  
7 signing the mortgage brokerage agreement.

8 § -15 Advertising. (a) It shall be a violation of this  
9 chapter for any person to:

10 (1) Advertise as a mortgage broker or loan originator  
11 unless the person holds a valid license under this  
12 chapter to provide the services advertised; or

13 (2) When inviting the recipient of the advertisement to  
14 refinance an existing residential mortgage loan,  
15 disclose the name of the lender who made the existing  
16 residential mortgage loan in the advertisement.

17 (b) A mortgage broker or loan originator may not advertise  
18 in any misleading or deceptive manner, such as advertising in a  
19 manner that is likely to cause the recipient to believe that the  
20 advertisement is from the mortgagee of record of the existing  
21 residential mortgage loan.

22 (c) As used in this section, "advertise" means:



- 1 (1) Issuing any card, sign, or device to any person;
- 2 (2) Causing, permitting, or allowing the placement of any  
3 sign or marking on or in any building, vehicle, or  
4 structure;
- 5 (3) Placing an advertisement in any newspaper, magazine,  
6 or on the Internet;
- 7 (4) Listing or advertising in any directory under a  
8 classification or heading that includes the words  
9 "mortgage broker", "loan originator", or the like;
- 10 (5) Broadcasting commercials by airwave or internet  
11 transmission; or
- 12 (6) Transmitting any written communication, including:
  - 13 (A) A letter or a postcard that encourages a person  
14 to borrow from or through a mortgage broker; or
  - 15 (B) A written communication that encourages a person  
16 to refinance the person's existing residential  
17 mortgage loan and mentions that a new residential  
18 mortgage loan will reduce the monthly payment the  
19 borrower will pay on the new residential mortgage  
20 loan or reduce the interest rate on the  
21 borrower's existing residential mortgage loan.





1           §   -16 **Voluntary surrender of license.** A mortgage broker  
2 or loan originator may voluntarily cease activity for which a  
3 license to operate is required by this chapter and surrender its  
4 license in the manner prescribed by rule.

5           §   -17 **Suspension and revocation.** (a) In addition to  
6 any other actions authorized by law, the commissioner may revoke  
7 or suspend a license issued under this chapter, condition the  
8 right of a licensee to use the license, or fine any person  
9 holding a license issued under this chapter, for any cause  
10 authorized by law, including engaging in any prohibited acts or  
11 practices.

12           (b) Prohibited acts or practices shall include, but not be  
13 limited to:

14           (1) Making a false promise likely to influence, persuade,  
15 or induce, or pursuing a course of misrepresentation  
16 or false promises through agents, licensees,  
17 advertising, or otherwise;

18           (2) Misrepresenting or concealing of any material fact  
19 with respect to any residential mortgage loan  
20 transaction resulting in injury to any party;

21           (3) Failing to disburse funds in accordance with an  
22 agreement;



- 1           (4) Failing to account or deliver to any person any  
2           personal property such as money, fund, deposit, check,  
3           draft, mortgage, or other document or thing of value  
4           which has come into the person's hands and which is  
5           not the person's property or which the person is not  
6           in law or equity entitled to retain, and at the time  
7           which has been agreed upon, or is required by law, or,  
8           in the absence of a fixed time, upon demand of the  
9           person entitled to the accounting or delivery;
- 10          (5) Failing to place, within a reasonable time upon  
11          receipt, any money, fund, deposit, check, or draft,  
12          entrusted to the licensee by any person dealing with  
13          the licensee in escrow pursuant to a written  
14          agreement, or to deposit the funds in a trust or  
15          escrow bank account maintained by the licensee in a  
16          bank located and doing business in the State, wherein  
17          the funds shall be kept until disbursement thereof is  
18          authorized;
- 19          (6) Delivering a misleading or deceptive communication or  
20          advertising, whether written, electronic, or oral,  
21          when marketing or soliciting a mortgage loan. A  
22          communication or advertisement that uses the name or



1 trademark of another financial institution, as defined  
2 in section 412:1-109, or its affiliates or  
3 subsidiaries, or infers that the communication or  
4 advertisement is from, endorsed by, is related to, or  
5 is the responsibility of the financial institution is  
6 a misleading or deceptive communication;

7 (7) Offering an annuity to the borrower prior to the  
8 closing of a residential mortgage loan or before the  
9 expiration of the right of the borrower to rescind the  
10 residential mortgage loan, or referring the borrower  
11 to anyone or referring anyone to the borrower, for the  
12 offering, soliciting, or selling of an annuity prior  
13 to the closing of the residential mortgage loan or  
14 before the expiration of the right of the borrower to  
15 rescind the mortgage agreement;

16 (8) Brokering or making any mortgage loan as a direct  
17 result of offering, soliciting, or selling such  
18 mortgage loan at the dwelling of a borrower without a  
19 prearranged appointment initiated by and at the  
20 invitation of the borrower;

21 (9) Filling in, without the consent of the borrower, any  
22 blank on a residential mortgage loan application that



- 1 blank requests information, including financial  
2 information;
- 3 (10) Filling in, without the consent of the borrower, any  
4 blank on any instrument evidencing or securing the  
5 residential mortgage loan which blank relates to the  
6 amount, interest rate, or monthly payment of the  
7 residential mortgage loan;
- 8 (11) Making payment directly or indirectly, of any kind, to  
9 any appraiser licensed or certified under section 466K  
10 to influence the valuation of the residential real  
11 property that will secure a residential mortgage loan;
- 12 (12) Conditioning compensation of an appraiser on  
13 establishing a certain value for such residential real  
14 property; or
- 15 (13) Failing to comply with this chapter or any order or  
16 rule made under the authority of this chapter.
- 17 (c) Any licensee may surrender the license by notifying  
18 the division in writing of its surrender, but this surrender  
19 shall not affect the licensee's liability for acts previously  
20 committed, and may not occur after the filing of a notice of  
21 hearing for suspension or revocation of the license.



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

6 § -18 Power to examine and investigate. (a) The  
7 commissioner may conduct examinations of mortgage brokers and  
8 loan originators under this chapter for the purpose of  
9 determining whether the mortgage broker or loan originator is in  
10 compliance with all applicable laws and rules, or orders issued  
11 by the commissioner.

12 (b) The commissioner shall have full access to the vaults,  
13 books, accounts, records, and documents of the licensee and may  
14 make any inquiries as may be necessary to ascertain the  
15 condition of the licensee. All officers, directors, employees,  
16 partners, members, managers, and agents of the licensee being  
17 examined shall cooperate fully with the commissioner and the  
18 commissioner's staff, and shall answer all inquiries and furnish  
19 all information pertaining to the same, to the best of their  
20 knowledge and ability.

21 (c) The commissioner may charge an examination fee based  
22 upon the cost per hour per examiner for all mortgage brokers and



1 loan originators examined by the commissioner or the  
2 commissioner's staff. The hourly fee shall be an amount as the  
3 commissioner shall establish by rule pursuant to chapter 91. In  
4 addition to the examination fee, the commissioner may charge any  
5 licensed mortgage broker or loan originator examined or  
6 investigated by the commissioner or the commissioner's staff  
7 additional amounts for travel, per diem, mileage, and other  
8 reasonable expenses incurred in connection with the examination  
9 or investigation.

10 (d) Notwithstanding chapter 92F, the examination process  
11 and related information and documents, including the reports of  
12 examination, are confidential and are not subject to discovery  
13 or disclosure in civil and criminal lawsuits.

14 **§ -19 Cease and desist orders; grounds for issuance.**

15 Whenever it appears to the commissioner that any person has  
16 engaged or is about to engage in any act or practice  
17 constituting a violation of:

18 (1) This chapter; or

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



1 The commissioner shall have the discretion to include in the  
2 order an assessment of an administrative fine against any person  
3 who violates this chapter.

4       **§ -20 Cease and desist orders; procedure; hearing;**  
5 **enforcement.** (a) The notice of charges and proposed cease and  
6 desist order shall be in writing and shall be served upon the  
7 mortgage broker, or loan originator and upon any other affected  
8 party wherever those persons can be located and served by the  
9 commissioner. The notice of charges shall state the alleged  
10 violations or wrongful practices and a summary of the facts in  
11 support of the allegations. The notice shall be accompanied by  
12 a proposed order that states the commissioner's intent to  
13 require discontinuance of the violation or practice and the  
14 immediate compliance with all requirements of any applicable  
15 agreement, condition of approval, order, rule, or law. The  
16 proposed order may also direct affirmative action as may be  
17 necessary to correct the alleged violation or wrongful practice.  
18 The notice of charges shall set forth a time and place for a  
19 hearing to determine whether the proposed order shall be issued.  
20       (b) Within twenty days after service of a notice of  
21 charges, unless an earlier date or later date is set by the  
22 commissioner upon request of the affected party, the



1 commissioner or the commissioner's designee shall hold a hearing  
2 in accordance with chapter 91. If no appearance is made at the  
3 scheduled hearing by the party or its duly authorized  
4 representative, the party shall be deemed to have consented to  
5 the issuance of the cease and desist order, and the commissioner  
6 may issue the order. Any cease and desist order issued after a  
7 hearing held in accordance with this subsection shall become  
8 effective after service upon the affected party and shall remain  
9 effective until modified or terminated by the commissioner. Any  
10 appeal of a cease and desist order shall be made to the circuit  
11 court in accordance with chapter 91.

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

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





1           §   -22 Powers of commissioner. The commissioner may  
2 adopt rules pursuant to chapter 91 as the commissioner deems  
3 necessary for the administration of this chapter.

4           In addition to any other powers provided by law, the  
5 commissioner shall have the authority to:

- 6           (1) Administer and enforce the provisions and requirements  
7               of this chapter;
- 8           (2) Adopt, amend, or repeal rules, issue declaratory  
9               rulings or informal nonbinding interpretations, and  
10             conduct contested case proceedings pursuant to chapter  
11             91;
- 12           (3) Grant, deny, forfeit, renew, reinstate, or restore the  
13             license of any mortgage broker or loan originator;
- 14           (4) Revoke, suspend, or otherwise limit the license of any  
15             mortgage broker or loan originator for any violation  
16             of this chapter, or any rule or order of, or agreement  
17             with the commissioner;
- 18           (5) Develop requirements for licensure through rules,  
19             including establishing the content of the written  
20             examinations required under section     -7 and  
21             determining the criteria for a passing grade;



- 1           (6) Investigate and conduct hearings regarding any  
2           violation of this chapter, and any rule or order of or  
3           agreement with the commissioner;
- 4           (7) Prepare, administer, and grade examinations; provided  
5           that the commissioner may contract with a testing  
6           agency to provide those services, and the commissioner  
7           may also reserve the right to modify, amend, change,  
8           or regrade the examination;
- 9           (8) Create fact-finding committees that may make  
10          recommendations to the commissioner for the  
11          commissioner's deliberations;
- 12          (9) Require the applicant and any of its officers,  
13          directors, employees, partners, members, managers and  
14          agents to disclose the relevant criminal history and  
15          request a criminal history record check in accordance  
16          with section 846-2.7;
- 17          (10) Contract with qualified persons, including  
18          investigators who may be exempt from chapter 76 and  
19          who shall assist the commissioner in exercising the  
20          commissioner's powers and duties;
- 21          (11) Require that all fees, fines and charges collected by  
22          the commissioner under this chapter be deposited into



1 the compliance resolution fund established pursuant to  
2 section 26-9(o);

- 3 (12) Subpoena witnesses and documents, administer oaths,  
4 and receive affidavits and oral testimony, including  
5 telephonic communications, and do any and all things  
6 necessary or incidental to the exercise of the  
7 commissioner's power and duties, including the  
8 authority to conduct contested case proceedings under  
9 chapter 91; and
- 10 (13) Require a mortgage broker or loan originator to comply  
11 with any rule, guidance, guideline, statement,  
12 supervisory policy or any similar proclamation issued,  
13 adopted or promulgated by the Federal Deposit  
14 Insurance Corporation to the same extent and in the  
15 same manner as a bank chartered by the State or in the  
16 alternative, any policy position of the Conference of  
17 State Bank Supervisors.

18 **§ -23 Fees, commissions, and charges.** (a) A licensed  
19 mortgage broker or loan originator shall not require a borrower  
20 to pay any fees or charges prior to the residential mortgage  
21 loan closing, except for:



- 1           (1) Charges to be incurred by the licensed mortgage broker  
2           and loan originator on behalf of the borrower for  
3           services from third parties necessary to process the  
4           residential mortgage loan application, such as credit  
5           reports and appraisals;
- 6           (2) An application fee;
- 7           (3) A rate lock fee;
- 8           (4) A commitment fee upon approval of the residential  
9           mortgage loan; and
- 10          (5) A loan cancellation fee.
- 11          (b) A licensed mortgage broker and loan originator shall  
12 not charge any fee that inures to the benefit of the licensee if  
13 it exceeds the fee disclosed on the most recent good faith  
14 estimate required by the federal Real Estate Settlement  
15 Procedures Act, unless:
- 16          (1) The need to change the higher fee was not reasonably  
17           foreseeable at the time the good faith estimate was  
18           written; and
- 19          (2) The licensee has provided to the borrower, no less  
20           than three business days prior to the signing of the  
21           mortgage loan documents, a clear written explanation



1 of the increase in the fee and the reason for charging  
2 a fee that exceeds what was previously disclosed.

3 (c) Within thirty days after any rejection, withdrawal, or  
4 closing, any fees collected in excess of actual costs shall be  
5 returned.

6 (d) The commissioner may also adopt rules concerning  
7 maximum fees, commissions, and charges on residential mortgage  
8 loan transactions. The maximum fees, commissions, and charges  
9 shall be related to the actual amount of money made available to  
10 the borrower, over and above the indebtedness of prior  
11 mortgages. The commissioner may also adopt rules concerning the  
12 full disclosure of the fees, commissions, and charges.

13 § -24 Confidentiality of records. (a) The commissioner  
14 and all employees, contractors, attorneys contracted or employed  
15 by the State, and appointees of the commissioner shall not  
16 divulge or furnish any information in their possession or  
17 obtained by them in the course of their official duties to  
18 persons outside the division of financial institutions, except  
19 to the director of commerce and consumer affairs, and to  
20 administrators of the uniform multistate automated licensing  
21 system, or unless otherwise permitted by this section or any  
22 other law regulating the licensees. The disclosures prohibited



1 by this section shall include, without limitation, information  
2 that is:

3 (1) Privileged or exempt from disclosure under any federal  
4 or state law;

5 (2) Related to an examination performed by or on behalf of  
6 the commissioner or contained in any report of  
7 examination;

8 (3) Contained in any report or application submitted to,  
9 or for the use of the commissioner, except for the  
10 nonproprietary portions of reports and applications;

11 (4) Related to the business, personal, or financial  
12 affairs of any person and is furnished to, or for the  
13 use of, the commissioner in confidence;

14 (5) Privileged or confidential and related to trade  
15 secrets and commercial or financial information  
16 obtained from a person;

17 (6) Obtained pursuant to any lawful investigation for the  
18 purpose of enforcing the laws regulating licensees;

19 (7) Related solely to the internal personnel rules or  
20 other internal practices of the commissioner;

21 (8) Contained in personnel, medical, and similar files,  
22 including financial files, the disclosure of which



1 would constitute a clearly unwarranted invasion of  
2 personal privacy; or

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

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

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

21 (d) The commissioner may furnish reports of examination,  
22 other information relating to the examination of a licensee, and



1 information relating to the supervision and regulation of a  
2 licensee to:

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

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

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

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

18 (e) The commissioner may disclose statistical data  
19 regarding the number of consumer complaints filed against a  
20 licensee, the general nature of the complaints, and the  
21 resolution of the complaints.





1           **§ -25 Penalty.** (a) A violation of this chapter shall  
2 be punishable by a fine of not more than \$5,000 or imprisonment  
3 of not more than one year, or both.

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

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

13           SECTION 2. Section 241-1, Hawaii Revised Statutes, is  
14 amended by amending the definition of "mortgage loan company" to  
15 read as follows:

16           "\"Mortgage loan company\" means any company licensed under  
17 chapter 454 [✓] or chapter \_\_\_\_\_."

18           SECTION 3. Section 412:3-502, Hawaii Revised Statutes, is  
19 amended to read as follows:

20           "**§412:3-502 Foreign financial institution.** No foreign  
21 financial institution shall receive deposits, lend money, or pay  
22 checks, negotiate orders of withdrawal or share drafts from any



1 principal office, branch, agency, automatic teller machine, or  
2 other location in this State, unless expressly authorized by  
3 this chapter, other laws of this State, or federal law; provided  
4 that nothing in this section shall prohibit any foreign  
5 financial institution from participating in the disbursement of  
6 cash through an automatic teller machine network or from  
7 operating from any location in this State as a mortgage broker  
8 licensed under chapter 454 [7] or \_\_\_\_\_, or as a real estate  
9 collection servicing agent."

10 SECTION 4. Section 454-3, Hawaii Revised Statutes, is  
11 amended by amending subsection (e) to read as follows:

12 "(e) All fees shall be established and adopted by the  
13 director in accordance with chapter 91 and shall be deposited  
14 into the compliance resolution fund established pursuant to  
15 section 26-9(o) [-]; provided that in order to establish  
16 regulatory practices for residential mortgage lending, a  
17 surcharge of \$400 shall be charged to a mortgage broker renewing  
18 a mortgage broker license and a surcharge of \$100 shall be  
19 charged to a mortgage solicitor renewing a mortgage solicitor  
20 license. Failure of any mortgage broker or mortgage solicitor  
21 to pay the biennial renewal fee and surcharge on or before  
22 December 31 of an even-numbered year 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[-] and surcharge. A  
5 licensee who fails to restore a license as provided in this  
6 subsection shall apply as a new applicant[-]; provided that,  
7 after January 1, 2011, a licensee who fails to restore a license  
8 as provided in this subsection shall apply as a new applicant  
9 under chapter \_\_\_\_\_."

10 SECTION 5. Section 477E-2, Hawaii Revised Statutes, is  
11 amended by amending the definition of "creditor" to read as  
12 follows:

13 "Creditor" means any bank; savings and loan association;  
14 trust company; financial services loan company or small loan  
15 company; credit union; mortgage banker, broker, or solicitor[-],  
16 or loan originator; pawnbroker; mutual or fraternal benefit  
17 society; debt adjuster; the issuer of a credit card as defined  
18 in section 708-800; any person who initiates, extends, renews,  
19 or continues loans of money or credit; any person who regularly  
20 arranges for the initiation, extension, renewal, or continuation  
21 of a loan of money or credit; or any assignee of an original



1 creditor who participates in the decision to grant, extend,  
2 renew, or to continue such loan or credit."

3 SECTION 6. Section 667-21, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

5 "(b) As used in this part:

6 "Borrower" means the borrower, maker, cosigner, or  
7 guarantor under a mortgage agreement.

8 "Foreclosing mortgagee" means the mortgagee that intends to  
9 conduct a power of sale foreclosure; provided that the mortgagee  
10 is a federally insured bank, a federally insured savings and  
11 loan association, a federally insured savings bank, a depository  
12 financial services loan company, a nondepository financial  
13 services loan company, a credit union insured by the National  
14 Credit Union Administration, a bank holding company, a foreign  
15 lender as defined in section 207-11, or an institutional  
16 investor [~~as defined in section 454-1~~].

17 "Mailed" means to be sent by regular mail, postage prepaid,  
18 and by certified, registered, or express mail, postage prepaid  
19 and return receipt requested.

20 "Mortgage" means a mortgage, security agreement, or other  
21 document under which property is mortgaged, encumbered, pledged,  
22 or otherwise rendered subject to a lien for the purpose of



1 securing the payment of money or the performance of an  
2 obligation.

3 "Mortgage agreement" includes the mortgage, the note or  
4 debt document, or any document amending any of the foregoing.

5 "Mortgaged property" means the property that is subject to  
6 the lien of the mortgage.

7 "Mortgagee" means the current holder of record of the  
8 mortgagee's or the lender's interest under the mortgage, or the  
9 current mortgagee's or lender's duly authorized agent.

10 "Mortgagor" means the mortgagor or borrower named in the  
11 mortgage and, unless the context otherwise indicates, includes  
12 the current owner of record of the mortgaged property whose  
13 interest is subject to the mortgage.

14 "Open house" means a public showing of the mortgaged  
15 property during a scheduled time period.

16 "Power of sale" or "power of sale foreclosure" means a  
17 nonjudicial foreclosure under this part when the mortgage  
18 contains, authorizes, permits, or provides for a power of sale,  
19 a power of sale foreclosure, a power of sale remedy, or a  
20 nonjudicial foreclosure.

21 "Property" means property (real, personal, or mixed), an  
22 interest in property (including fee simple, leasehold, life



1 estate, reversionary interest, and any other estate under  
2 applicable law), or other interests that can be subject to the  
3 lien of a mortgage.

4 "Record" or "recorded" means a document is recorded or  
5 filed with the office of the assistant registrar of the land  
6 court under chapter 501 or recorded with the registrar of  
7 conveyances under chapter 502, or both, as applicable.

8 "Served" means to have service of the notice of default  
9 made in accordance with the service of process or the service of  
10 summons under the Hawaii rules of civil procedure, and under  
11 sections 634-35 and 634-36."

12 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) Criminal history record checks may be conducted by:

15 (1) The department of health on operators of adult foster  
16 homes or developmental disabilities domiciliary homes  
17 and their employees, as provided by section 333F-22;

18 (2) The department of health on prospective employees,  
19 persons seeking to serve as providers, or  
20 subcontractors in positions that place them in direct  
21 contact with clients when providing non-witnessed



- 1 direct mental health services as provided by section  
2 321-171.5;
- 3 (3) The department of health on all applicants for  
4 licensure for, operators for, and prospective  
5 employees, and volunteers at one or more of the  
6 following: skilled nursing facility, intermediate  
7 care facility, adult residential care home, expanded  
8 adult residential care homes, assisted living  
9 facility, home health agency, hospice, adult day  
10 health center, special treatment facility, therapeutic  
11 living program, intermediate care facility for the  
12 mentally retarded, hospital, rural health center and  
13 rehabilitation agency, and, in the case of any of the  
14 above-related facilities operating in a private  
15 residence, on any adult living in the facility other  
16 than the client as provided by section 321-15.2;
- 17 (4) The department of education on employees, prospective  
18 employees, and teacher trainees in any public school  
19 in positions that necessitate close proximity to  
20 children as provided by section 302A-601.5;
- 21 (5) The counties on employees and prospective employees  
22 who may be in positions that place them in close



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





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



- 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  
11                  302C-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  
8 service contracted and subcontracted service providers  
9 and 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 as provided  
 5        by section -22;

6        (25) The department of commerce and consumer affairs on the  
 7        applicant for a loan originator license, as provided  
 8        by section -22; 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 8. After December 31, 2010, no new license shall  
 13        be issued and no license renewal shall be effectuated under  
 14        chapter 454, Hawaii Revised Statutes. After December 31, 2010,  
 15        a person who would be regulated under this Act shall be required  
 16        to be 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        January 1, 2013; provided that:

20        (1) A mortgage broker or mortgage lender who files an  
 21        application for a license pursuant to this Act by  
 22        January 1, 2012, and whose application is determined



1 to be complete by the commissioner by March 31, 2012,  
2 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 May 1, 2012, and  
7 June 30, 2012, and whose application is determined to  
8 be complete by the commissioner by August 31, 2012,  
9 shall be deemed in compliance with the licensing  
10 provisions of this Act until such time as the license  
11 is issued or denied by the commissioner.

12 SECTION 9. A person licensed under this Act shall not be  
13 required to be licensed under chapter 454, Hawaii Revised  
14 Statutes, and shall not be subject to that chapter upon the  
15 effective date of the person's licensure under this Act;  
16 provided that this section shall not affect rights and duties  
17 that matured, penalties that were incurred, and proceedings that  
18 were begun, before the effective date of the person's licensure  
19 under this Act.

20 SECTION 10. There is appropriated out of the compliance  
21 resolution fund of the State of Hawaii the sum of \$140,000 or so  
22 much thereof as may be necessary for fiscal year 2008-2009 to



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

6 The sum appropriated shall be expended by the department of  
7 commerce and consumer affairs for the purposes of this Act.

8 SECTION 11. Chapter 454, Hawaii Revised Statutes, is  
9 repealed; provided that the repeal does not affect rights and  
10 duties that matured, penalties that were incurred, and  
11 proceedings that were begun, before its repeal.

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

14 SECTION 13. This Act shall take effect on July 1, 2008;  
15 provided that section 11 shall take effect on January 1, 2013.



**Report Title:**

Mortgage Brokers

**Description:**

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws relating to mortgage brokers and loan originators. Repeals chapter 454, Hawaii Revised Statutes, relating to mortgage brokers and solicitors. (SD1)

