

S.B. NO. 1401

1 "Institutional investor" means:

2 (1) Banks, savings and loan institutions, savings banks,
3 trust companies, insurance companies, investment
4 companies as defined in the Investment Company Act of
5 1940, pension or profit sharing trusts, any of the
6 classes of persons permitted to qualify as foreign
7 lenders under section 207-11, or other financial
8 institutions or institutional buyers, whether acting
9 for themselves or as fiduciaries; and

10 (2) The United States or any foreign government, or any
11 agency or corporate or other instrumentality of the
12 United States, a foreign government, or political
13 subdivision thereof.

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

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

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

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

21 "Mortgage solicitor" means an individual employee of a
22 licensed mortgage broker who, subject to the licensed mortgage

S.B. NO. 1401

1 broker's direction and control of the actions of the employee,
2 for compensation or gain, or in the expectation of compensation
3 or gain, either directly or indirectly negotiates, acquires, or
4 offers to negotiate or acquire a residential mortgage loan.

5 "Person" means a natural person, partnership, corporation,
6 association, or other organization.

7 "Residential mortgage loan" means a first mortgage loan,
8 home equity loan, reverse mortgage loan, installment sales
9 contract, land contract, agreement for sale, or a temporary
10 financing loan such as a construction loan, which is secured by
11 a first or subordinate lien on residential real property,
12 including a refinancing of any secured loan on residential real
13 property, upon which:

14 (1) There is or will be constructed a structure or
15 structures designed principally for occupancy of from
16 one to four families (including individual units of
17 condominiums and cooperatives and including any
18 related interests, such as a share in the cooperative
19 or right to occupancy of the unit); or

20 (2) A manufactured home is located or will be placed on
21 the real property, using proceeds of the loan.

S.B. NO. 1401

1 A loan for business purposes shall not be considered a
2 residential mortgage loan.

3 **§ -2 Exemptions.** This chapter shall not apply to the
4 following:

- 5 (1) Banks, trust companies, savings and loan institutions,
6 savings banks, pension trusts, credit unions, credit
7 union service organizations, insurance companies,
8 financial services loan companies, or federally
9 licensed small business investment companies,
10 authorized under any law of this State or of the
11 United States to do business in this State;
- 12 (2) A person making or acquiring a residential mortgage
13 loan with one's own funds for one's own investment
14 without intent to resell the residential mortgage
15 loan;
- 16 (3) A person licensed to practice law in this State, not
17 actively and principally engaged in the business of
18 negotiating residential mortgage loans, when the
19 person renders services in the course of the person's
20 practice as an attorney;
- 21 (4) A person licensed as a real estate broker or
22 salesperson in this State, not actively and

S.B. NO. 1401

1 principally engaged in the business of negotiating
2 residential mortgage loans, when the person renders
3 services in the course of the person's practice as a
4 real estate broker or salesperson;

5 (5) An institutional investor negotiating, entering into,
6 or performing under a residential mortgage loan
7 purchase agreement for its portfolio, for subsequent
8 resale to other institutional investors, or for
9 placement of the residential mortgage loans into pools
10 or packaging them into mortgage-backed securities. As
11 used in this paragraph, "loan purchase agreement"
12 means an agreement or arrangement under which a bank,
13 savings and loan institution, credit union, financial
14 services loan company, or other financial institution
15 authorized to do business in this State agrees to sell
16 residential mortgage loans or obtain funding therefor,
17 with or without the transfer of servicing rights, to
18 an institutional investor;

19 (6) A foreign lender conducting business in accordance
20 with part II of chapter 207; and

21 (7) A person licensed under chapter 467 as a real estate
22 broker or salesperson selling time share interests on

S.B. NO. 1401

1 behalf of a time share plan developer that is licensed
2 as a mortgage broker under this chapter; provided that:

3 (A) The acts or conduct of a developer's authorized
4 representative shall be deemed to be the acts or
5 conduct of the developer for the purpose of
6 section -16; and

7 (B) If the person engages in acts or conduct
8 prohibited under this chapter, the acts or conduct
9 shall constitute grounds for disciplinary action
10 under section 467-14.

11 § -3 **Prohibited acts.** (a) No person required to be
12 licensed under this chapter shall act, attempt to act, or hold
13 oneself out as a mortgage broker or mortgage solicitor without a
14 license as required in this chapter. No person required to be
15 licensed under this chapter who acts, attempts to act, or holds
16 oneself out as a mortgage broker or mortgage solicitor without a
17 license shall charge or receive any commission, fee, bonus,
18 salary, hourly wage, remuneration, compensation, or gain in
19 connection with arranging for, negotiating, or selling a
20 residential mortgage loan.

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

S.B. NO. 1401

- 1 (1) Provide or offer to provide any service requiring a
2 license pursuant to this chapter unless the person has
3 been issued the appropriate license or is exempt from
4 licensing;
- 5 (2) Disburse the residential mortgage loan proceeds to a
6 closing agent in any form other than, as applicable,
7 direct deposit to a customer's account, wire, bank or
8 certified check, attorney's check drawn on a trust
9 account, or such other form as specifically authorized
10 by applicable law;
- 11 (3) Fail to disburse funds in accordance with a
12 residential mortgage loan commitment to make a
13 residential mortgage loan that has been accepted by
14 the borrower;
- 15 (4) Accept any fees at closing that were not disclosed as
16 required by law;
- 17 (5) Retain third party fees at closing in excess of the
18 actual cost of third party services;
- 19 (6) Require the borrower to be represented by a third
20 party service provider except under the terms
21 permitted by applicable federal law;

S.B. NO. 1401

- 1 (7) Use any agreement or instrument in which blanks are
2 left to be filled in after execution;
- 3 (8) Participate in any exclusive dealing or exclusive
4 agency agreement with any borrower;
- 5 (9) Engage in unfair, deceptive, or fraudulent residential
6 mortgage loan practices;
- 7 (10) Make any untrue statement of a material fact in any
8 document filed with the commissioner under this
9 chapter or rules adopted thereunder, or omit any
10 material fact that is required to be stated in any
11 document.

12 § -4 **Licensing requirements; scope of license.** (a) If
13 the applicant for a mortgage broker license is not a natural
14 person, no application for a mortgage broker license shall be
15 granted unless the applicant first registers to do business in
16 this State with the business registration division of the
17 department of commerce and consumer affairs.

18 (b) If the applicant for a mortgage broker license is a
19 natural person, the mortgage broker license shall entitle any
20 employees of the licensed mortgage broker to engage in the
21 mortgage broker business, provided that they are licensed under
22 this chapter as mortgage brokers or mortgage solicitors. The

1 applicant shall be designated as the principal mortgage broker,
2 who shall manage and supervise all of the applicant's employees
3 licensed under this section, unless the applicant shall
4 designate, in writing, another licensed mortgage broker in the
5 applicant's employ to be the principal mortgage broker.

6 (c) If the applicant is not a natural person, the mortgage
7 broker license issued to it entitles all employees, partners,
8 and members of the licensed corporation, partnership,
9 association, or other organization to engage in the business of
10 mortgage brokering, provided that they are licensed under this
11 chapter as mortgage brokers or mortgage solicitors, and provided
12 further that one officer, director, employee, partner, or
13 member, then holding a mortgage broker license, shall manage and
14 supervise any licensed employees, partners, and members of the
15 applicant, and shall be designated by the applicant, in writing,
16 as its principal mortgage broker.

17 (d) A mortgage broker licensed under this chapter shall
18 notify the commissioner, in writing, within five business days
19 of any change in the designation of the principal mortgage
20 broker, or of any change in the licensed mortgage broker in
21 charge of a branch office.

1 (e) If the applicant for a mortgage solicitor license is a
2 natural person, the mortgage solicitor license shall only allow
3 the licensed mortgage solicitor to act as a mortgage solicitor
4 provided the applicant is an employee of a licensed mortgage
5 broker.

6 § -5 Mortgage broker license application; renewal. (a)

7 Each application for and renewal of a mortgage broker license
8 shall be made in writing on the forms and in the manner
9 prescribed by the commissioner. To obtain and renew a license,
10 the applicant for a mortgage broker's license shall satisfy the
11 following requirements:

12 (1) The applicant shall have paid the fees as required by
13 rule;

14 (2) The applicant shall have complied with section -7;

15 (3) The applicant, or in the case of an applicant that is
16 not a natural person, any of its officers, directors,
17 employees, partners, or members, shall not have had a
18 license issued under this chapter or any similar law
19 in another state suspended or revoked within five
20 years of the filing of the present application;

21 (4) The applicant, or in the case of an applicant that is
22 not a natural person, any of its officers, directors,

S.B. NO. 1401

1 employees, partners, or members shall not have been
2 convicted of a misdemeanor involving dishonesty or
3 financial misconduct or a felony within seven years of
4 the filing of the present application as determined in
5 a criminal background investigation which the
6 commissioner may request in accordance with section
7 846-2.7;

8 (5) The applicant, in the case of an applicant that is a
9 natural person, shall have at least two years of
10 experience in financial transactions involving primary
11 or subordinate residential mortgage loan financing as:

12 (A) A mortgage broker;

13 (B) A mortgage banker or responsible individual of a
14 mortgage banking business;

15 (C) A loan officer with responsibility primarily for
16 loans secured by a lien on real estate;

17 (D) A branch manager of a lender with responsibility
18 primarily for loans secured by a lien on real
19 estate; or

20 (E) A mortgage broker in possession of a mortgage
21 broker or similar license from another state with
22 licensing standards substantially similar to

1 those in this State, as determined by the
2 commissioner;

3 (6) As part of the application for a mortgage broker
4 license, but not for the renewal thereof, the
5 applicant, or in the case of an applicant that is not
6 a natural person, its principal mortgage broker, shall
7 submit evidence satisfactory to the commissioner of
8 having taken and passed a written examination, the
9 content of which shall be established by the
10 commissioner; and

11 (7) As part of the application for renewal of a mortgage
12 broker license, the applicant, or in the case of an
13 applicant that is not a natural person, its principal
14 mortgage broker, shall have complied with section -
15 10.

16 (b) If the commissioner finds that any one of these
17 conditions has not been met, the commissioner shall not issue or
18 renew the license. In the event the commissioner orders denial
19 of issuance or of renewal of a license, an appeal may be made in
20 accordance with chapter 91.

1 (c) Each license shall be renewed biennially and the
2 renewal application shall be made on a form and in the manner
3 prescribed by the commissioner.

4 § -6 Mortgage solicitor license application; renewal.

5 (a) Each application for and renewal of a mortgage solicitor
6 license shall be made in writing on the forms and in the manner
7 prescribed by the commissioner. To obtain and renew a license,
8 the applicant for a mortgage solicitor's license shall satisfy
9 the following requirements:

10 (1) The applicant shall have paid the fees as required by
11 rule;

12 (2) The applicant shall not have had a license issued
13 under this chapter or any similar law in another state
14 suspended or revoked within five years of the filing
15 of the present application;

16 (3) The applicant shall not have been convicted of a
17 misdemeanor involving dishonesty or financial
18 misconduct or a felony within seven years of the
19 filing of the present application as determined in a
20 criminal background investigation which the
21 commissioner may request in accordance with section
22 846-2.7;

1 (4) As part of the application for a mortgage solicitor
2 license, but not for the renewal thereof, the
3 applicant shall submit evidence satisfactory to the
4 commissioner of having taken and passed a written
5 examination, the content of which shall be established
6 by the commissioner; and

7 (5) As part of the application for renewal of a mortgage
8 solicitor license, the applicant shall have complied
9 with section -10.

10 (b) If the commissioner finds that any one of these
11 conditions has not been met, the commissioner shall not issue or
12 renew the license. In the event the commissioner orders denial
13 of issuance or of renewal of a license, an appeal may be made in
14 accordance with chapter 91.

15 (c) Each license shall be renewed biennially and the
16 renewal application shall be made on a form and in the manner
17 prescribed by the commissioner.

18 § -7 **Principal place of business; branch office; change**
19 **of address.** (a) Every licensed mortgage broker shall have and
20 maintain a principal place of business in this State for the
21 transaction of business. In the event the licensed mortgage
22 broker maintains a branch office, the commissioner, upon

1 application and payment by the licensee of any application fee
2 established by rule, shall issue a license for each branch
3 office. The principal mortgage broker of the licensee shall
4 designate, in writing, an individual licensed as a mortgage
5 broker to be in charge of each branch office.

6 (b) In the event that the location of the principal place
7 of business or any branch office is changed, or in the event
8 that a branch office is to be closed, the licensee shall notify
9 the commissioner, in writing, at least ten business days prior
10 to the relocation or closing.

11 § -8 Bond requirement; claims against bond. (a) Every
12 person licensed as a mortgage broker shall deposit with the
13 commissioner, prior to doing business, a bond in an amount of
14 \$50,000, executed by the licensed mortgage broker as principal
15 and a surety company. The bond shall be conditioned upon the
16 faithful compliance of the licensed mortgage broker with this
17 chapter and the rules adopted under this chapter. The bond
18 shall run to the State for the benefit of any person injured by
19 any violation of this chapter or the rules adopted under this
20 chapter by the licensed mortgage broker or any officer,
21 director, employee, partner, or member; provided that the
22 aggregate liability of the surety shall not exceed the sum of

1 the bond. A license shall not be in effect at any time when the
2 licensed mortgage broker's bond is not in full force and effect.

3 (b) The commissioner or any person injured by a violation
4 of this chapter or rules adopted under this chapter, may bring
5 an action against the surety bond of the licensed mortgage
6 broker who committed the violation.

7 (c) The remedies provided under this section are
8 cumulative and nonexclusive and do not affect any other remedy
9 available at law.

10 **§ -9 Fees; failure to pay fees.** (a) All fees and other
11 charges under this chapter shall be established and adopted by
12 the commissioner in accordance with chapter 91 and shall be
13 deposited into the compliance resolution fund established
14 pursuant to section 26-9(o).

15 (b) Failure of any licensed mortgage broker or licensed
16 mortgage solicitor to pay the renewal fee on or before the due
17 date shall constitute an automatic forfeiture of the license.
18 The forfeited license may be restored; provided that application
19 for restoration is made within six months of the forfeiture and
20 a penalty fee, as may be prescribed by rule, is paid, in
21 addition to the delinquent license fee. A licensed mortgage
22 broker or mortgage solicitor who fails to restore a forfeited

1 license as provided in this subsection shall apply as a new
2 applicant.

3 **§ -10 Continuing education requirement.** (a) Prior to
4 biennial license renewal under this chapter, each licensed
5 mortgage broker that is a natural person and each licensed
6 mortgage solicitor shall satisfactorily complete twelve hours of
7 approved continuing education courses during the two-year period
8 preceding the application for renewal. Each licensed mortgage
9 broker that is a natural person and each licensed mortgage
10 solicitor shall file a certificate of satisfactory completion of
11 approved continuing education courses by that licensed mortgage
12 broker or licensed mortgage solicitor no later than one month
13 prior to the license expiration date. Failure to satisfy the
14 continuing education requirement prior to one month before the
15 license expiration date shall constitute an automatic forfeiture
16 of the license. The forfeited license may be restored; provided
17 that the continuing education requirement of this section is
18 satisfied and application for restoration is made within six
19 months of the forfeiture, and a penalty fee as may be prescribed
20 by rule is paid in addition to the delinquent license fee. A
21 licensed mortgage broker or licensed mortgage solicitor who

1 fails to restore a forfeited license as provided in this
2 subsection shall apply as a new applicant.

3 (b) To receive approval of a continuing education course,
4 the course provider shall file an application with the
5 commissioner, which shall include:

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

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

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

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

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

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

19 **§ -11 Record keeping requirements.** Each licensed
20 mortgage broker shall maintain at its designated principal place
21 of business in this State all books, accounts, records, and
22 documents necessary to determine the licensed mortgage broker's

1 compliance with this chapter. All such books, accounts,
2 records, and documents shall be kept available for review and
3 examination by the commissioner for a period of six years.

4 **§ -12 Examinations; confidentiality.** (a) The
5 commissioner may conduct examinations of licensed mortgage
6 brokers under this chapter.

7 (b) The commissioner shall have full access to the vaults,
8 books, accounts, records, and documents of the licensed mortgage
9 broker and may make any inquiries as may be necessary to review
10 the operations and ascertain the condition of the licensed
11 mortgage broker. All officers, directors, employees, partners,
12 and members of the licensed mortgage broker being examined shall
13 cooperate fully with the commissioner and the commissioner's
14 staff, and shall answer all inquiries and furnish all
15 information pertaining to the same, to the best of their
16 knowledge and ability.

17 (c) The commissioner may charge an examination fee based
18 upon the cost per hour per examiner for all licensed mortgage
19 brokers examined by the commissioner or the commissioner's
20 staff. The hourly fee shall be \$40 or such amount as the
21 commissioner shall establish by rule pursuant to chapter 91. In
22 addition to the examination fee, the commissioner may charge any

1 licensed mortgage broker examined or investigated by the
2 commissioner or the commissioner's staff additional amounts for
3 travel, per diem, mileage, and other reasonable expenses
4 incurred in connection with the examination or investigation.

5 (d) Notwithstanding chapter 92F, the examination process
6 and related information and documents, including the reports of
7 examination, are confidential and are not subject to discovery
8 in civil and criminal lawsuits or disclosure under federal or
9 state law.

10 § -13 **Written agreements.** (a) For any transaction
11 between a licensed mortgage broker or licensed mortgage
12 solicitor employed by that broker and a borrower seeking a
13 residential mortgage loan, the following requirements shall
14 apply:

15 (1) Any written commitment letter to make a residential
16 mortgage loan with specified terms, including loan
17 amount, interest rate, points, and payment terms,
18 which is issued by a licensed mortgage broker or
19 licensed mortgage solicitor employed by that broker
20 and accepted by a borrower, shall be honored by the
21 licensed mortgage broker if the borrower has
22 completely satisfied all of the conditions of the

1 commitment in a timely manner and prior to the
2 specified expiration date of the commitment; and
3 (2) The mortgage broker or licensed mortgage solicitor
4 employed by that broker shall provide the borrower
5 with the following notice of the borrower's rights and
6 obligations, not longer than one page in length and in
7 twelve-point font, regarding the terms of the
8 residential mortgage loan not later than within three
9 business days of a borrower signing a completed
10 residential mortgage loan application and before the
11 borrower gives the licensed mortgage broker or
12 licensed mortgage solicitor employed by that broker
13 any consideration:

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

15 If you obtain this loan, the lender will have a mortgage on
16 your home. You could lose your home, and any money you
17 have put into it, if you do not meet your obligations under
18 the loan. Mortgage loan rates and closing costs and fees
19 vary based on many factors, including your particular
20 credit and financial circumstances, your earnings history,
21 the loan-to-value requested, and the type of property that

S.B. NO. 1401

1 will secure your loan. The loan rate and fees could also
2 vary based on which lender or mortgage broker you select.
3 If you are uncertain about your rights and obligations
4 under this agreement, you should consider consulting a
5 qualified independent credit counselor or other experienced
6 financial adviser regarding the rate, fees, and provisions
7 of this mortgage loan before you proceed. For information
8 on contacting a qualified credit counselor, call the United
9 States Department of Housing and Urban Development for a
10 list of counselors.

11 You are not required to complete any loan agreement merely
12 because you have received these disclosures or have signed
13 a loan application. If you proceed with this mortgage
14 loan, you should also remember that you may face serious
15 financial risks if you use this loan to pay off debts and
16 then later incur significant new debts.

17 Property taxes and homeowner's insurance are your
18 responsibility. Not all lenders provide escrow services
19 for these payments. You should ask your lender about these
20 services. Your payments on existing debts contribute to
21 your credit ratings. You should not accept any advice to
22 ignore your regular payments to your existing creditors."

1 (b) The licensed mortgage broker or licensed mortgage
2 solicitor employed by that broker shall secure a signed
3 acknowledgment of receipt by the borrower of a copy of the
4 notice.

5 § -14 Disclosure of loan terms. (a) Prior to accepting
6 any consideration from the borrower, a licensed mortgage broker
7 or licensed mortgage solicitor employed by that broker shall
8 disclose in writing to any applicant for a residential mortgage
9 loan the following information:

10 (1) That the licensed mortgage broker or licensed mortgage
11 solicitor employed by that broker cannot guarantee
12 acceptance into any particular residential mortgage
13 loan program or promise any specific residential
14 mortgage loan terms or conditions;

15 (2) A good faith estimate of the fees to be collected,
16 when required by the federal Real Estate Settlement
17 Procedures Act, including a credit report fee,
18 property appraisal fee, or any other third-party fee;
19 and

20 (3) The terms and conditions for obtaining a refund of
21 fees or arranging for the transfer of third-party

1 service work products to another residential mortgage
2 loan lender or mortgage broker, if any.

3 (b) The mortgage broker may issue a residential mortgage
4 loan commitment and may furnish a lock-in of the interest rate
5 and program on behalf of the residential mortgage loan lender
6 when the licensed mortgage broker has obtained a written or
7 electronically transmitted residential mortgage loan commitment
8 or lock-in for the residential mortgage loan from the
9 residential mortgage loan lender on behalf of the borrower for
10 the residential mortgage loan. The residential mortgage loan
11 commitment issued by the licensed mortgage broker to the
12 borrower on behalf of the residential mortgage loan lender shall
13 be in the same form and substance as issued by the residential
14 mortgage loan lender and shall identify the residential mortgage
15 loan lender by name.

16 § -15 Establishment of trust account for borrower funds
17 to pay third-party providers. Each licensed mortgage broker
18 shall hold in trust all funds received from borrowers seeking a
19 residential mortgage loan for payment to third-party providers.
20 The funds may not be used for the benefit of the licensed
21 mortgage broker or any person not entitled to any benefit,
22 except as may be expressly permitted by law. Each licensed

1 mortgage broker shall deposit those funds in a trust account
2 maintained by the licensed mortgage broker with a bank or other
3 financial institution located and authorized to accept deposits
4 or engage in the business of a trust company in this State.
5 Each licensed mortgage broker is responsible for depositing,
6 holding, disbursing, accounting for, and otherwise dealing with
7 the funds.

8 § -16 **Submission of security breach information.** A
9 notice of any security breach, as defined by section 487N-1,
10 following discovery or notification of the breach in the
11 security of personal information of individuals whose personal
12 information was, or is reasonably believed to have been,
13 acquired by an unauthorized person, shall be submitted to the
14 commissioner. The notice shall be made without unreasonable
15 delay consistent with any measures necessary to determine the
16 scope of the breach and to restore the reasonable integrity,
17 security, and confidentiality of the data system.

18 § -17 **License sanctions.** (a) In addition to any other
19 actions authorized by law, the commissioner may suspend, revoke,
20 deny, condition in any manner, or refuse to renew, reinstate, or
21 restore, any license issued under this chapter, or fine any

S.B. NO. 1401

1 person holding a license issued under this chapter, for any
2 violation of this chapter.

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

5 **§ -18 Cease and desist orders; grounds for issuance.**

6 (a) Whenever it appears to the commissioner that any person has
7 engaged or is about to engage in any act or practice
8 constituting a violation of:

9 (1) This chapter; or

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

14 The commissioner shall have the discretion to include in the
15 order an assessment of an administrative fine against any person
16 who violates this chapter.

17 **§ -19 Cease and desist orders; procedure; hearing;**

18 **enforcement.** (a) The notice of charges and proposed cease and
19 desist order shall be in writing and shall be served upon the
20 mortgage broker at its principal office in this State and upon
21 any other affected party wherever that person can be located and
22 served by the commissioner. The notice of charges shall state

1 the alleged violations or wrongful practices and a summary of
2 the facts in support of the allegations. The notice shall be
3 accompanied by a proposed order that states the commissioner's
4 intent to require discontinuance of the violation or practice
5 and the immediate compliance with all requirements of any
6 applicable agreement, conditions of approval, order, rule or
7 law. The proposed order may also direct affirmative action as
8 may be necessary to correct the alleged violation or wrongful
9 practice. The notice of charges shall set forth a time and
10 place for a hearing to determine whether the proposed order
11 shall be issued.

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

S.B. NO. 1401

1 effective until modified or terminated by the commissioner. Any
2 appeal of a cease and desist order shall be made to the circuit
3 court in accordance with chapter 91.

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

9 § -20 **Consent cease and desist orders.** Any affected
10 party may waive its rights to a hearing on any notice of charges
11 by stipulating and consenting to the issuance of a cease and
12 desist order. Any cease and desist order issued by consent
13 shall be effective as of the date specified therein and shall
14 remain effective until modified or terminated by the
15 commissioner.

16 § -21 **Powers of commissioner.** In addition to any other
17 acts or conditions provided by law, the commissioner may:

18 (1) Adopt, amend, or repeal rules, issue declaratory
19 rulings or informal nonbinding interpretations, and
20 conduct contested case proceedings pursuant to chapter
21 91;

S.B. NO. 1401

- 1 (2) Grant, deny, forfeit, renew, reinstate, or restore the
2 license of any mortgage broker;
- 3 (3) Revoke, suspend, or otherwise limit the license of any
4 mortgage broker or mortgage solicitor for any
5 violation of the provisions in this chapter, or any
6 rule or order of, or agreement with the commissioner;
- 7 (4) Develop requirements for licensure through rules;
- 8 (5) Investigate and conduct hearings regarding any
9 violation of this chapter, and any rule or order of or
10 agreement with the commissioner;
- 11 (6) Prepare, administer, and grade examinations; provided
12 that the commissioner may contract with a testing
13 agency to provide those services, and the commissioner
14 may also reserve the right to modify, amend, or change
15 the examination;
- 16 (7) Create fact-finding committees that may make
17 recommendations to the commissioner for the
18 commissioner's deliberations;
- 19 (8) Request a criminal history record check of the
20 applicant and any of its officers, directors,
21 employees, partners, and members in accordance with
22 section 846-2.7;

S.B. NO. 1401

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

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

12 § -22 **Summary license suspension.** (a) Notwithstanding
13 any law to the contrary, the commissioner or delegate may cause
14 the immediate suspension or restriction of a license, subject to
15 subsequent notice and hearing or other adequate procedures, upon
16 a specific determination that the failure to take such an action
17 may result in:

- 18 (1) An immediate and unreasonable threat to personal
19 safety; or
20 (2) Fraud or misrepresentation upon consumers, and that,
21 for the protection of the public from the possible

1 consequences of practices, the license should be
2 immediately suspended or restricted.

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

17 § -23 **Fees, commissions, and charges.** The commissioner
18 may also adopt rules concerning maximum brokerage fees,
19 commissions, and charges on brokered residential mortgage loan
20 transactions, including but not limited to rules requiring the
21 full disclosure of brokerage fees, commissions, and charges.

S.B. NO. 1401

1 **§ -24 Private right of action.** Nothing in this chapter
2 shall be construed to preclude any individual or entity that
3 suffers loss as a result of a violation of this chapter from
4 maintaining a civil action to recover damages and, as provided
5 by statute, attorney fees.

6 **§ -25 Penalty.** Any person who violates a provision of
7 this chapter shall be subject to an administrative fine of not
8 more than \$5,000 for each violation. All fines collected by the
9 commissioner shall be deposited into the compliance resolution
10 fund established pursuant to section 26-9(o)."

11 SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

- 13 "(b) Criminal history record checks may be conducted by:
- 14 (1) The department of health on operators of adult foster
15 homes or developmental disabilities domiciliary homes
16 and their employees, as provided by section 333F-22;
- 17 (2) The department of health on prospective employees,
18 persons seeking to serve as providers, or
19 subcontractors in positions that place them in direct
20 contact with clients when providing non-witnessed
21 direct mental health services as provided by section
22 321-171.5;

S.B. NO. 1401

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

S.B. NO. 1401

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

S.B. NO. 1401

- 1 adults in care, residing in foster family homes as
2 provided by section 346-335;
- 3 (12) The department of human services on staff members of
4 the Hawaii youth correctional facility as provided by
5 section 352-5.5;
- 6 (13) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;
- 12 (14) The judiciary on employees and applicants at detention
13 and shelter facilities as provided by section 571-34;
- 14 (15) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;
- 20 (16) The department of commerce and consumer affairs on
21 applicants for private detective or private guard
22 licensure as provided by section 463-9;

S.B. NO. 1401

- 1 (17) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided as provided by section 302C-
8 1;
- 9 (18) The public library system on employees and prospective
10 employees whose positions place them in close
11 proximity to children as provided by section 302A-
12 601.5;
- 13 (19) The State or any of its branches, political
14 subdivisions, or agencies on applicants and employees
15 holding a position that has the same type of contact
16 with children, dependent adults, or persons committed
17 to a correctional facility as other public employees
18 who hold positions that are authorized by law to
19 require criminal history record checks as a condition
20 of employment as provided by section 78-2.7;
- 21 (20) The department of human services on licensed adult day
22 care center operators, employees, new employees,

S.B. NO. 1401

- 1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 346-97;
- 3 (21) The department of human services on purchase of service
4 contracted and subcontracted service providers and
5 their employees serving clients of the adult and
6 community care services branch, as provided by section
7 346-97;
- 8 (22) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;
- 12 (23) The department of human services on contracted and
13 subcontracted service providers and their current and
14 prospective employees that provide home and community-
15 based services under Section 1915(c) of the Social
16 Security Act (42 U.S.C. §1396n(c)), as provided by
17 section 346-97; [~~and~~]
- 18 (24) The department of commerce and consumer affairs on
19 applicants for a mortgage broker license, or in the
20 case where the applicant is not a natural person, on
21 any of its officers, directors, employees, partners,
22 or members as provided by section -5;

S.B. NO. 1401

1 (25) The department of commerce and consumer affairs on
2 applicants for a mortgage solicitor's license as
3 provided by section -6; and

4 [~~24~~] (26) Any other organization, entity, or the State,
5 its branches, political subdivisions, or agencies as
6 may be authorized by state law."

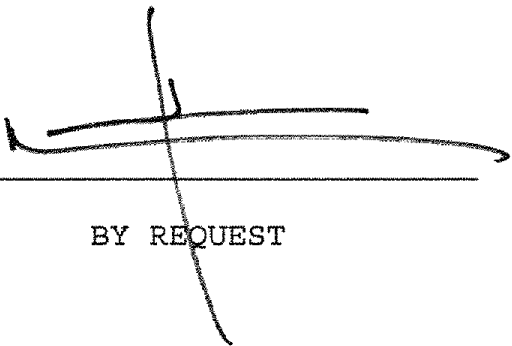
7 SECTION 3. Chapter 454, Hawaii Revised Statutes, is
8 repealed.

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2008.

12
13
14
15
16
17
18

INTRODUCED BY: _____



BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: The purpose of this bill is to repeal the existing law on Mortgage Brokers and Solicitors, chapter 454, Hawaii Revised Statutes (HRS), and to replace it with a statute that provides for more specialized regulation of residential mortgage brokers by the Division of Financial Institutions (DFI) rather than the Professional & Vocational Licensing Division (PVL) 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 redefine "mortgage broker" to have it apply only to those who deal in residential mortgage loan transactions, (brokers of non-residential property mortgages will no longer be regulated), establish pre-licensing testing for applicants, continuing education requirements, periodic examinations for licensees, and increase the required bond from \$15,000 to \$50,000. These changes will serve to improve licensed residential mortgage broker and solicitor 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 section 846-2.7, HRS, and repeal chapter 454, HRS.

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

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

License application requirements are established, and include a written examination of the applicant or its designated responsible individual, along with a \$50,000 bond requirement for a licensee.

Provision for biennial license renewal includes completion of a continuing education requirement by the licensee, if an individual, or by its responsible individual if the licensee is not an individual.

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

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

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

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

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

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

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

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

GENERAL FUND:

None.

OTHER FUNDS:

PVL's mortgage broker program, which

registers all mortgage brokers and mortgage solicitors, generated approximately \$384,626 in FY 2005 when the biennial licenses were renewed, and \$218,237 in FY 2006. This bill does not contemplate the licensing of non-residential mortgage brokers or non-residential mortgage solicitors. The bill does, however, include a far more rigorous licensing and supervision process than that currently employed by PVL. It is anticipated that net revenues would decline somewhat from those now realized by PVL. However, such revenues would be adequate to fund the licensing and supervisory program contemplated by the bill.

PPBS PROGRAM
DESIGNATION:

CCA-104.

OTHER AFFECTED
AGENCIES:

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

EFFECTIVE DATE:

July 1, 2008.