
A BILL FOR AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding 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.

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

15 "Institutional investor" means:

16 (1) An insured depository institution;

17 (2) A real estate trust as defined in the Internal Revenue

18 Code;



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

18 "Insured depository institution" means the same as in 12
19 U.S.C. section 1813(c)(2), and includes an operating subsidiary
20 of the insured depository institution that is an operating
21 subsidiary under the laws and rules applicable to the insured
22 depository institution.



1 "Licensee" means a person who is a mortgage broker, loan
2 originator, or a person who is required to be licensed under
3 this chapter.

4 "Loan originator" means an individual not licensed as a
5 mortgage broker and not exempt under section -2:

- 6 (1) Who performs any of the functions of a mortgage
7 broker, as defined in this chapter;
- 8 (2) Who is employed directly or indirectly by a mortgage
9 broker; and
- 10 (3) Whose mortgage loan transactions are under the
11 direction, control, supervision, or management of a
12 mortgage broker.

13 "Mortgage brokerage agreement" means the written agreement
14 between the mortgage broker and a prospective borrower in which
15 a mortgage broker agrees to attempt to obtain a residential
16 mortgage loan for the borrower or assist the borrower in
17 obtaining a residential mortgage loan, and does not include a
18 promissory note and mortgage, or any other document or
19 instrument evidencing or securing the residential mortgage loan.

20 "Commissioner" means the commissioner of financial
21 institutions.



1 "Person" means an individual, sole proprietorship,
2 partnership, corporation, limited liability company, limited
3 liability partnership, or other association of individuals,
4 however organized.

5 "Residential mortgage loan" means any loan, including a
6 loan to refinance a residential mortgage loan, secured primarily
7 by a lien on residential real property, the proceeds of which
8 loan will be used primarily for personal, family, or household
9 use.

10 "Residential real property" means:

11 (1) Real property located in the State that is improved by
12 or will be improved by the proceeds of the residential
13 mortgage loan, and is improved by a structure or
14 structures designed principally for occupancy of one
15 to four families, including individual units of
16 condominiums and cooperatives, and any related
17 interests, such as a share in the cooperative or right
18 to occupancy unit; or

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

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



1 "Uniform multistate automated licensing system" means a
2 system involving one or more states, the District of Columbia,
3 Territory of Guam, or the Commonwealth of Puerto Rico
4 established to facilitate the sharing of regulatory information
5 and the licensing and application processes, by electronic or
6 other means, for mortgage brokers and loan originators.

7 § -2 **Exemptions.** This chapter does not apply to the
8 following:

- 9 (1) Any person that is chartered or authorized under the
10 laws of any state or federal law to engage in the
11 activity of an insured depository institution,
12 including a bank or savings association, and any
13 employee of an insured depository institution;
- 14 (2) Any of the following:
- 15 (A) A credit union;
- 16 (B) A credit union service organization;
- 17 (C) A trust company;
- 18 (D) An insurance company;
- 19 (E) A financial services loan company; or
- 20 (F) A federally licensed small business investment
21 company, including an officer or employee of the
22 company;



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



1 paragraph, "loan purchase agreement" means an
2 agreement or arrangement under which an insured
3 depository institution, credit union, financial
4 services loan company, or other financial institution
5 registered to do business in the State agrees to sell
6 mortgage loans or obtain funding therefor, with or
7 without the transfer of servicing rights, to an
8 institutional investor;

9 (8) A person licensed under chapter 467 as a real estate
10 broker or salesperson selling time share interests on
11 behalf of a time share plan developer that is licensed
12 as a mortgage broker under this chapter; provided
13 that:

14 (A) The acts or conduct of a developer's authorized
15 representative shall be deemed to be the acts or
16 conduct of the developer for the purposes of
17 section -4; and

18 (B) If the person engages in acts or conduct
19 prohibited under this chapter, including section
20 -11(a), the acts or conduct shall constitute
21 grounds for disciplinary action under section
22 467-14;



1 (9) Persons employed by, or who contract with a licensee
2 under this chapter to perform only clerical or
3 administrative functions on behalf of such licensee,
4 and who do not solicit borrowers or negotiate the
5 terms of residential mortgage loans on behalf of the
6 licensee or borrower; and

7 (10) Employees and agents of a licensee if the licensee is
8 an affiliate of a bank and is wholly owned by the
9 holding company that owns the bank.

10 § -3 **Requirement of licensure.** No person required to be
11 licensed under this chapter shall act as or otherwise engage in
12 the activity of a mortgage broker or loan originator without a
13 license as provided in this chapter, and no person not licensed
14 under this chapter shall charge or receive any commission, fee,
15 or bonus in connection with arranging for, negotiating, or
16 selling a residential mortgage loan.

17 § -4 **Loan originator.** A loan originator may not engage
18 in the activity of a loan originator unless licensed under this
19 chapter, employed by a mortgage broker, and under the control,
20 direction, and supervision of a principal mortgage broker.



1 § -5 **Principal mortgage broker.** (a) A principal
2 mortgage broker shall have the duty to directly manage and
3 supervise a mortgage brokerage firm and its licensees.

4 (b) A principal mortgage broker shall be responsible for:

5 (1) Supervising the maintenance of client trust accounts,
6 the disbursements from those accounts, and the
7 accounting practices of the mortgage brokerage firm;

8 (2) Supervising the maintenance of the records, contracts,
9 and documents of the mortgage brokerage firm;

10 (3) Supervising all mortgage brokerage agreements and
11 mortgage loan documents of the mortgage brokerage firm
12 and the handling of these documents by the employed
13 licensees of the mortgage brokerage firm;

14 (4) Supervising all licensees employed by the mortgage
15 brokerage firm;

16 (5) Developing policies and procedures for the mortgage
17 brokerage firm relating to the handling of residential
18 mortgage loan transactions and the conduct of the
19 employed licensees and other staff, and educating and
20 enforcing these policies and procedures;

21 (6) Setting a policy on continuing education requirements
22 for all employed licensees of the mortgage brokerage

- 1 firm to be in compliance with any statutory or rule
2 requirements;
- 3 (7) Ensuring that the licenses of all employed licensees
4 and the license of the mortgage brokerage firm are
5 current and active, and any required bond or
6 statutorily permissible substitute is valid and not
7 cancelled;
- 8 (8) Establishing and maintaining a training program for
9 all employed licensees of the mortgage brokerage firm;
- 10 (9) Ensuring that all employed licensees of the mortgage
11 brokerage firm are provided adequate information and
12 training on the latest amendments to licensing laws
13 and rules, and any other related laws and rules;
- 14 (10) Notifying the commissioner of any licensee employed by
15 the mortgage brokerage firm who terminates employment
16 with the mortgage brokerage firm and immediately
17 returns the license to the licensee; and
- 18 (11) Ensuring that the records, agreements, including the
19 mortgage brokerage agreement, and loan documents are
20 retained for seven years in paper or electronic format
21 by the mortgage brokerage firm.



1 § -6 **Licensing requirements.** (a) If the applicant is a
2 person other than an individual, no license shall be granted
3 unless the applicant first registers to do business in this
4 State with the business registration division of the department
5 of commerce and consumer affairs, and has designated in the
6 application the name of the individual who holds a mortgage
7 broker license as the principal mortgage broker for the mortgage
8 brokerage firm. The designated principal mortgage broker shall
9 have two years of experience as a mortgage broker, and shall
10 have management and supervision responsibilities for the
11 mortgage brokerage firm and the licensees employed by the
12 applicant.

13 (b) If the applicant for a mortgage broker license is a
14 sole proprietorship, upon licensure, the individual mortgage
15 broker shall perform the duties of a principal mortgage broker
16 under section -5.

17 (c) An applicant shall pass a written examination prior to
18 licensure. The commissioner shall determine the examination
19 score that all applicants must receive to pass the written
20 examination. The examination shall test the knowledge of the
21 applicant concerning a residential mortgage loan transaction,
22 the residential mortgage loan laws and rules of the State and



1 relevant federal statutes, and the duties and responsibilities
2 of a principal mortgage broker, mortgage broker, or loan
3 originator, as appropriate. The commissioner may make
4 arrangements, including contracting with an outside testing
5 service, for administering examinations and collecting fees.
6 The fees collected shall be nonrefundable. An applicant who
7 fails to appear for the examination as scheduled or fails to
8 pass the examination shall reapply for an examination and remit
9 all required fees and forms before being rescheduled for another
10 examination. An applicant's examination scores shall be valid
11 for two years from the date of the examination.

12 (d) An applicant for a renewal of a license shall certify
13 on a form provided by the commissioner that the licensee has
14 completed twelve hours for a mortgage broker or nine hours for a
15 loan originator of continuing education or its equivalent as
16 determined by the commissioner during the two-year period
17 preceding the application for renewal. The certification shall
18 be under oath, if required by the commissioner. In addition to
19 the certification, the commissioner may require any licensee to
20 submit further evidence satisfactory to the commissioner
21 demonstrating compliance with this section. Upon failure to
22 satisfy the continuing education requirement by the licensee



1 expiration date, the renewed license shall be placed on inactive
2 status.

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

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

- 17 (1) Proof of having satisfied the continuing education
18 requirement of this section;
- 19 (2) A complete application setting forth the information
20 as may be prescribed or required by the commissioner;
21 and
- 22 (3) Payment of the proper fee.



1 A false certification to the commissioner shall be deemed a
2 violation and shall subject the licensee to disciplinary
3 proceedings, including denial of the application for renewal of
4 the license. Within sixty days after receipt of notification of
5 the forfeiture, a licensee may request an administrative hearing
6 pursuant to chapter 91 to review the forfeiture.

7 (e) Every person licensed as a mortgage broker shall
8 deposit with the commissioner, prior to doing business, a bond
9 in the amounts set forth below and executed by the mortgage
10 broker as principal and a surety company authorized to do
11 business in the State as a surety:

12 (1) A mortgage brokerage firm with one to five mortgage
13 brokers or loan originators shall post a bond in the
14 amount of \$25,000;

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

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

21 The bond shall be conditioned upon the faithful compliance
22 of the mortgage broker with this chapter. The bond shall run to



1 the State for the benefit of any person injured by the wrongful
2 act, default, fraud, or misrepresentation of the mortgage broker
3 or the loan originators; provided that the aggregate liability
4 of the surety shall not exceed the sum of the bond. The surety
5 may cancel the bond by giving sixty days' notice in writing to
6 the commissioner and shall thereafter be relieved of any
7 liability for any breach of condition occurring after the
8 effective date of cancellation. A mortgage broker's license
9 shall not be in effect at any time when the bond is not in full
10 force and effect.

11 (f) The failure, refusal, or neglect of any licensee to
12 maintain the applicable bond in full force and effect shall
13 cause the automatic forfeiture of the license, effective as of
14 the date of expiration or cancellation of the bond. The
15 commissioner shall not restore the forfeited license until
16 satisfactory proof of bonding is submitted to the commissioner,
17 as required by this section. Failure to submit proof sufficient
18 to restore a license within sixty days after the date of
19 forfeiture shall result in the forfeiture of all fees and shall
20 require the licensee to apply as a new applicant. The
21 commissioner may:

22 (1) Assess a fee not to exceed \$1,000;



1 (2) Impose a bonding requirement in addition to the bond
2 requirement under subsection (e); or

3 (3) Restrict the license as a condition of restoration of
4 a license forfeited under this section.

5 § -7 **Application; denial; investigation; display of**
6 **license; branch office.** (a) Each application for a license or
7 its renewal shall be made in writing, on the forms and in the
8 manner and accompanied by evidence in support of the
9 applications as prescribed by the commissioner. The
10 commissioner shall require information with regard to the
11 applicant as the commissioner may deem desirable, with due
12 regard to the paramount interests of the public, as to the
13 experience, financial integrity, and competency of the applicant
14 as to financial transaction involving primary or subordinate
15 residential mortgage loan financing. Notwithstanding any other
16 law to the contrary, the commissioner shall require the
17 applicant to disclose any arrest and conviction records of the
18 applicant, including an arrest for which the applicant was
19 granted a deferred acceptance of a guilty plea or the benefit of
20 a pre-trial diversion program.

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



- 1 (1) The financial responsibility, character, and fitness
2 of the applicant, or of the officers and directors if
3 the applicant is a corporation, the partners if the
4 applicant is a partnership, the members or managers if
5 the applicant is a limited liability company, or the
6 designated principal mortgage broker are not such as
7 to warrant belief that the business will be operated
8 honestly and fairly within the purposes of this
9 chapter;
- 10 (2) The designated principal mortgage broker in charge of
11 the applicant's places of business does not have a
12 minimum of two years' experience in residential
13 mortgage lending;
- 14 (3) The applicant has been charged or indicted for a crime
15 of dishonesty, which resulted in a conviction by nolo
16 contendere or otherwise, a deferred acceptance of
17 guilt plea or a pre-trial diversion program and
18 dismissal of the charge or indictment;
- 19 (4) The applicant has had a license, substantially
20 equivalent to a license under this chapter and issued
21 by any state or jurisdiction under the control of the
22 United States, that was denied, revoked, or suspended



1 under the laws of such state or jurisdiction under the
2 control of the United States;

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

6 (6) The applicant or any officer, director, partner,
7 member, manager, employee, or agent of the applicant
8 has materially violated this chapter or any rule or
9 order lawfully made pursuant to this chapter;

10 (7) The applicant or any officer, director, partner,
11 member, manager, employee, or agent of the applicant
12 has materially violated any state or federal law,
13 rule, or regulation pertaining to residential mortgage
14 loans;

15 (8) The applicant or the applicant's designee has failed
16 to pass a written examination established by the
17 commissioner; or

18 (9) The applicant has not provided information on the
19 application as reasonably required by the
20 commissioner.

21 (c) The commissioner is empowered to conduct any
22 investigation that the commissioner may deem necessary to



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

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

6 (e) Each mortgage broker shall display the certificate of
7 license issued by the commissioner in plain view in its
8 principal office and in each branch office except a mortgage
9 broker who is not required to have an office in Hawaii shall not
10 be required to display the certificate of license. Upon
11 request, the mortgage broker shall make available for inspection
12 the mortgage broker's license and the licenses of any mortgage
13 broker or loan originator employed by the mortgage broker.

14 (f) Except for a mortgage broker who qualifies as a
15 foreign lender under section 207-11, every licensed mortgage
16 broker shall have and maintain a principal place of business in
17 the State for the transaction of business. In the event the
18 mortgage broker desires to maintain a branch office or offices,
19 the commissioner, upon application and payment of a fee, shall
20 issue a branch office license. The mortgage broker shall
21 designate a loan originator who has two years of experience in
22 financial transactions involving primary or subordinate



1 residential mortgage loan financing, or equivalent experience as
2 determined by the commissioner, to be in charge of each branch
3 office.

4 § -8 Uniform multistate automated licensing system. (a)

5 The legislature has determined that a uniform multistate
6 administration of an automated licensing system for mortgage
7 brokers and individual loan originators is consistent with both
8 the public interest and the purposes of this chapter. For the
9 sole purpose of participating in the establishment and
10 implementation of a multistate automated licensing system for
11 mortgage brokers and loan originators, the commissioner is
12 authorized:

- 13 (1) To modify by rule the license renewal dates; and
- 14 (2) To establish by rule such new requirements as are
15 necessary for the State to participate in a multistate
16 automated licensing system upon the commissioner's
17 finding that each new requirement is consistent with
18 both the public interest and the purposes of this
19 chapter.

20 (b) Nothing in this section shall authorize the
21 commissioner to require any person exempt under section -2,
22 or employees or exclusive agents of any such exempt person, to



1 submit information to, or participate in, the uniform multistate
2 licensing system.

3 § -9 **Written agreements.** For any transaction between a
4 mortgage broker or a loan originator and a borrower, the
5 following requirements shall apply:

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

11 (2) Any written commitment letter to make a residential
12 mortgage loan with specified terms, including loan
13 amount, interest rate, points, and payment terms,
14 which is issued by a mortgage broker and accepted by a
15 borrower, must be honored by the mortgage broker if
16 the borrower has completely satisfied all of the
17 conditions of the commitment in a timely manner and
18 prior to the specified expiration date of the
19 commitment. A loan originator may not issue a written
20 commitment letter. A written commitment letter shall
21 specify the conditions precedent to closing the
22 residential mortgage loan and the lender, which has



1 the ultimate authority to fund and close the
2 residential mortgage loan;

3 (3) A mortgage broker or loan originator shall provide the
4 borrower with the following notice (or substantially
5 similar notice) of the borrower's rights and
6 obligations, not longer than one page in length and in
7 twelve-point type, regarding the terms of the mortgage
8 loan transaction not later than the time the notice is
9 required under the notice provision contained in 12
10 C.F.R. section 226.31(c), as amended:

11 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

12 You are not required to complete this
13 agreement merely because you have signed a loan
14 application. If you obtain this loan, the lender
15 will have a mortgage on your home. You could
16 lose your home, and any money you have put into
17 it, if you do not meet your obligations.

18 If you are uncertain about your rights and
19 obligations under this agreement, you should
20 consider consulting a qualified independent
21 housing counselor or other experienced financial
22 adviser regarding the rate, fees, and provisions



1 of this mortgage loan before you proceed. For
2 information on contacting a qualified housing
3 counselor, call the United States Department of
4 Housing and Urban Development's counseling and
5 referral line or its website for a list of
6 housing counseling agencies."

7 The mortgage broker or loan originator shall provide
8 the notice to the borrower and shall secure a signed
9 acknowledgement of receipt by the borrower of a copy
10 of the notice. The notice requirements of this
11 paragraph shall not apply when a similar disclosure is
12 required under federal law, including but not limited
13 to home equity loans and high cost loans under the
14 Home Ownership and Equity Protection Act of 1994, 15
15 U.S.C. section 1639; and

16 (4) Within three business days of receipt of a borrower's
17 completed residential mortgage loan application by the
18 licensee, and before the borrower gives the licensee
19 any moneys except for an application fee, the licensee
20 shall sign a mortgage brokerage agreement with the
21 borrower. The mortgage brokerage agreement shall be
22 with the mortgage broker employing the mortgage broker



1 or loan originator. The mortgage brokerage agreement
2 shall be in writing, and signed and dated by both the
3 borrower and the licensee. The mortgage brokerage
4 agreement shall include a clear and conspicuous
5 statement:

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

9 (B) Explaining whether the licensee is a fiduciary
10 for the borrower;

11 (C) Explaining the nature of the licensee's
12 compensation, and if the licensee is a loan
13 originator, explaining the compensation of the
14 mortgage brokerage firm that the mortgage broker
15 or loan originator is employed by, and whether
16 the mortgage broker and loan originator may
17 receive compensation from the borrower, the
18 lender, or both;

19 (D) Describing the services the licensee will perform
20 for the borrower;

21 (E) Setting forth the conditions under which the
22 borrower is obligated to pay fees to the



1 licensee; the manner in which the borrower may
2 cancel the mortgage brokerage agreement; the
3 borrower's liabilities for fees and costs; and
4 the mortgage broker's contact information for
5 dispute resolution; and

6 (F) If the licensee makes materially false or
7 misleading statements or omissions in the
8 mortgage brokerage agreement, explaining that the
9 borrower, upon written notice, may:

10 (i) Void the mortgage brokerage agreement;
11 (ii) Recover moneys paid to the licensed mortgage
12 broker and loan originator by the borrower
13 for which no services have been performed;
14 and

15 (iii) Recover actual costs, including attorney
16 fees, for enforcing the borrower's rights
17 under the mortgage brokerage agreement.

18 A copy of the fully signed mortgage brokerage
19 agreement shall be given to the borrower by the
20 mortgage broker or loan originator immediately after
21 signing the mortgage brokerage agreement.



1 § -10 Advertising. (a) It shall be a violation of this
2 chapter for any person to:

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

6 (2) When inviting the recipient of the advertisement to
7 refinance an existing residential mortgage loan,
8 disclose the name of the lender who made the existing
9 residential mortgage loan in the advertisement.

10 (b) A mortgage broker or loan originator may not advertise
11 in any misleading or deceptive manner, such as advertising in a
12 manner that is likely to cause the recipient to believe that the
13 advertisement is from the mortgagor of record of the existing
14 residential mortgage loan.

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

16 (1) Issuing any card, sign, or device to any person;
17 (2) Causing, permitting, or allowing the placement of any
18 sign or marking on or in any building, vehicle, or
19 structure;

20 (3) Placing an advertisement in any newspaper, magazine,
21 or on the Internet;



- 1 (4) Listing or advertising in any directory under a
2 classification or heading that includes the words
3 "mortgage broker", "loan originator", or the like;
- 4 (5) Broadcasting commercials by airwave or internet
5 transmission; or
- 6 (6) Transmitting any written communication, including:
7 (A) A letter or a postcard that encourages a person
8 to borrow from or through a mortgage broker; or
9 (B) A written communication that encourages a person
10 to refinance the person's existing residential
11 mortgage loan and mentions that a new residential
12 mortgage loan will reduce the monthly payment the
13 borrower will pay on the new residential mortgage
14 loan or reduce the interest rate on the
15 borrower's existing residential mortgage loan.

16 § -11 **Licensing sanctions.** (a) In addition to any
17 other actions authorized by law, the commissioner may revoke or
18 suspend a license issued under this chapter, condition the right
19 of a licensee to use the license, or fine any person holding a
20 license issued under this chapter, for any cause authorized by
21 law, including any of the following acts or conduct of a
22 licensee:



- 1 (1) Making a false promise likely to influence, persuade,
2 or induce, or pursuing a course of misrepresentation
3 or false promises through agents, licensees,
4 advertising, or otherwise;
- 5 (2) Misrepresentation or concealment of any material fact
6 with respect to any residential mortgage loan
7 transaction resulting in injury to any party;
- 8 (3) Failure to disburse funds in accordance with an
9 agreement;
- 10 (4) Failure to account or deliver to any person any
11 personal property such as money, fund, deposit, check,
12 draft, mortgage, or other document or thing of value
13 which has come into the person's hands and which is
14 not the person's property or which the person is not
15 in law or equity entitled to retain, and at the time
16 which has been agreed upon, or is required by law, or,
17 in the absence of a fixed time, upon demand of the
18 person entitled to the accounting or delivery;
- 19 (5) Failure to place, within a reasonable time upon
20 receipt, any money, fund, deposit, check, or draft,
21 entrusted to the licensee by any person dealing with
22 the licensee in escrow pursuant to a written



1 agreement, or to deposit the funds in a trust or
2 escrow bank account maintained by the licensee in a
3 bank located and doing business in the State, wherein
4 the funds shall be kept until disbursement thereof is
5 authorized;

6 (6) Delivering a misleading or deceptive communication or
7 advertising, whether written, electronic, or oral,
8 when marketing or soliciting a residential mortgage
9 loan. A communication or advertisement that uses the
10 name or trademark of another financial institution, as
11 defined in section 412:1-109, or its affiliates or
12 subsidiaries, or infers that the communication or
13 advertisement is from, endorsed by, is related to, or
14 is the responsibility of the financial institution is
15 a misleading or deceptive communication;

16 (7) Brokering or making any residential mortgage loan as a
17 direct result of offering, soliciting, or selling such
18 residential mortgage loan at the dwelling of a
19 borrower without a prearranged appointment;

20 (8) Without the express consent of the potential borrower,
21 filling in any blank on a residential mortgage loan



1 application which blank requests material information,
2 including material financial information;

3 (9) Without the express consent of the borrower, filling
4 in any blank on any instrument evidencing or securing
5 the residential mortgage loan which blank relates to
6 the amount, interest rate, or monthly payment of the
7 residential mortgage loan;

8 (10) Make payment directly or indirectly, of any kind, to
9 any appraiser licensed or certified under chapter 466K
10 to influence the valuation of the residential real
11 property that will secure a residential mortgage loan;

12 (11) Conditioning compensation of an appraiser on
13 establishing a certain value for such residential real
14 property; or

15 (12) Failure to comply with this chapter or any order or
16 rule made under the authority of this chapter.

17 § -12 **Power to examine and investigate.** (a) The
18 commissioner may conduct examinations of mortgage brokers and
19 loan originators under this chapter for the purpose of
20 determining whether the mortgage broker or loan originator is in
21 compliance with all laws, rules, or orders issued by the
22 commissioner.



1 (b) The commissioner shall have full access to the books,
2 accounts, records, and documents of the licensee and may make
3 any inquiries as may be necessary to ascertain the condition of
4 the licensee. All officers, directors, employees, partners,
5 members, and agents of the licensee being examined shall
6 cooperate fully with the commissioner and the commissioner's
7 staff, and shall answer all inquiries and furnish all
8 information pertaining to the same, to the best of their
9 knowledge and ability.

10 (c) The commissioner may charge an examination fee based
11 upon the cost per hour per examiner for all mortgage brokers and
12 loan originators examined by the commissioner or the
13 commissioner's staff. The fee shall be \$40 per hour in the case
14 of a mortgage brokerage firm and \$20 per hour in the case of a
15 mortgage broker operating as a sole proprietorship or an amount
16 as the commissioner shall establish by rule pursuant to chapter
17 91. In addition to the examination fee, the commissioner may
18 charge any licensed mortgage broker examined or investigated by
19 the commissioner or the commissioner's staff additional amounts
20 for travel, per diem, mileage, and other reasonable expenses
21 incurred in connection with the examination or investigation.



1 (d) Notwithstanding chapter 92F, the examination process
2 and related information and documents, including the reports of
3 examination, are confidential and are not subject to discovery
4 or disclosure in civil and criminal actions.

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

11 **§ -13 Cease and desist orders; grounds for issuance.**

12 Whenever it appears to the commissioner that any person has
13 engaged or is about to engage in any act or practice
14 constituting a violation of:

15 (1) This chapter; or

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

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



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

18 (b) Within twenty days after service of a notice of
19 charges, unless an earlier date or later date is set by the
20 commissioner upon request of the affected party, the
21 commissioner or the commissioner's designee shall hold a hearing
22 in accordance with chapter 91. If no appearance is made at the



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

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

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



1 § -16 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 may:

- 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
11 chapter 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 -6 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, and agents to
14 disclose the relevant criminal history and request a
15 criminal history record check in accordance with
16 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 § -17 Fees, commissions, and charges. (a) A licensed
19 mortgage broker and loan originator shall not require a borrower
20 to pay any fees or charges prior to the mortgage loan closing,
21 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 mortgage loan application, such as credit reports and
5 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 charge 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 mortgage loan
8 transactions. The maximum fees, commissions, and charges shall
9 be related to the actual amount of money made available to the
10 borrower, over and above the indebtedness of prior mortgages.
11 The commissioner may also adopt rules concerning the full
12 disclosure of the fees, commissions, and charges.

13 § -18 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 submitted to, or for the use
9 of the commissioner, except for the nonproprietary
10 portions of 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 § -19 **Penalty.** (a) A violation of this chapter shall
19 be punishable by a fine of not more than \$2,000 or imprisonment
20 of not more than one year, or both.

21 (b) Any person who, in the course of engaging in conduct
22 that requires a license under this chapter, commits a violation



1 of this chapter or the rules adopted pursuant to this chapter,
2 and the violation includes conduct that is directed towards,
3 targets, or is committed against an elder, may be fined an
4 amount not to exceed \$10,000 for each violation in addition to
5 any other fine or penalty.

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

8 SECTION 2. Section 92-28, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§92-28 State service fees; increase or decrease of.** Any
11 law to the contrary notwithstanding, the fees or other nontax
12 revenues assessed or charged by any board, commission, or other
13 governmental agency may be increased or decreased by the body in
14 an amount not to exceed fifty per cent of the statutorily
15 assessed fee or nontax revenue, to maintain a reasonable
16 relation between the revenues derived from such fee or nontax
17 revenue and the cost or value of services rendered,
18 comparability among fees imposed by the State, or any other
19 purpose which it may deem necessary and reasonable; provided
20 that:

21 (1) The authority to increase or decrease fees or nontax
22 revenues shall be subject to the approval of the



1 governor and extend only to the following: chapters
2 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
3 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,
4 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
5 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444,
6 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453,
7 453D, [~~454~~] ____, 455, 456, 457, 457A, 457B, 457G,
8 458, 459, 460, 460J, 461, 461J, 462A, 463, 463E, 464,
9 465, 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471,
10 482, 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E,
11 572, 574, and 846 (part II);

12 (2) The authority to increase or decrease fees or nontax
13 revenues under the chapters listed in paragraph (1)
14 that are established by the department of commerce and
15 consumer affairs shall apply to fees or nontax
16 revenues established by statute or rule;

17 (3) The authority to increase or decrease fees or nontax
18 revenues established by the University of Hawaii under
19 chapter 304A shall be subject to the approval of the
20 board of regents; provided that the board's approval
21 of any increase or decrease in tuition for regular
22 credit courses shall be preceded by an open public



1 meeting held during or prior to the semester preceding
2 the semester to which the tuition applies;

3 (4) This section shall not apply to judicial fees as may
4 be set by any chapter cited in this section;

5 (5) The authority to increase or decrease fees or nontax
6 revenues pursuant to this section shall be exempt from
7 the public notice and public hearing requirements of
8 chapter 91; and

9 (6) Fees for copies of proposed and final rules and public
10 notices of proposed rulemaking actions under chapter 91 shall
11 not exceed 10 cents a page, as required by section 91-2.5."

12 SECTION 3. Section 241-1, Hawaii Revised Statutes, is
13 amended by amending the definition of "mortgage loan company" to
14 read as follows:

15 ""Mortgage loan company" means any company licensed under
16 chapter [~~454-~~] ____."

17 SECTION 4. Section 412:3-502, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§412:3-502 Foreign financial institution.** No foreign
20 financial institution shall receive deposits, lend money, or pay
21 checks, negotiate orders of withdrawal or share drafts from any
22 principal office, branch, agency, automatic teller machine, or



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

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

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



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

3 "(b) As used in this part:

4 "Borrower" means the borrower, maker, cosigner, or
5 guarantor under a mortgage agreement.

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

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

18 "Mortgage" means a mortgage, security agreement, or other
19 document under which property is mortgaged, encumbered, pledged,
20 or otherwise rendered subject to a lien for the purpose of
21 securing the payment of money or the performance of an
22 obligation.



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

3 "Mortgaged property" means the property that is subject to
4 the lien of the mortgage.

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

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

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

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

19 "Property" means property (real, personal, or mixed), an
20 interest in property (including fee simple, leasehold, life
21 estate, reversionary interest, and any other estate under



1 applicable law), or other interests that can be subject to the
2 lien of a mortgage.

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

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

11 SECTION 7. 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;



- 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;



- 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
9 346-19.7;
- 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



- 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;



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
8 302C-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
12 302A-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,



- 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
4 service contracted and subcontracted service providers
5 and 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 the
19 applicant, or any of its officers, directors,
20 partners, members, managers, employees, or agents, if
21 it is an applicant for a mortgage broker license as
22 provided by section -7;



1 (25) The department of commerce and consumer affairs on the
2 applicant for a loan originator license, as provided
3 by section -7; 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 8. After December 31, 2010, no new license shall
8 be issued and no license renewal shall be effectuated under
9 chapter 454, Hawaii Revised Statutes. After December 31, 2010,
10 a person who would be regulated under this Act shall be required
11 to be licensed under this Act, except that a mortgage broker or
12 mortgage solicitor licensed under chapter 454 as of January 1,
13 2011, shall not be required to be licensed under this Act until
14 October 1, 2012; provided that:

15 (1) A mortgage broker or mortgage lender who files an
16 application for a license pursuant to this Act by
17 October 1, 2011, and whose application is determined
18 to be complete by the commissioner by December 31,
19 2011, shall be deemed in compliance with the licensing
20 provisions of this Act until such time as the license
21 is issued or denied by the commissioner; and



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

8 SECTION 9. A person licensed under this Act prior to
9 October 1, 2011, shall not be required to be licensed under
10 chapter 454, Hawaii Revised Statutes, and shall not be subject
11 to the provisions of that chapter upon the effective date of the
12 person's licensure under this Act; provided that this section
13 shall not affect rights and duties that matured, penalties that
14 were incurred, and proceedings that were begun, before the
15 effective date of the person's licensure under this Act.

16 SECTION 10. There is appropriated out of the compliance
17 resolution fund of the State of Hawaii the sum of \$140,000 or so
18 much thereof as may be necessary for fiscal year 2008-2009 to
19 carry out the purposes of this Act, including the hiring of one
20 permanent clerical assistant and six permanent examiners, exempt
21 from chapter 76, Hawaii Revised Statutes, in the division of
22 financial institutions, to implement this Act.



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

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

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

9 SECTION 13. This Act shall take effect on July 1, 2050.



Report Title:

Mortgage Brokers

Description:

Repeals the law on mortgage brokers and solicitors under chapter 454, Hawaii Revised Statutes, and replaces it with a statute that provides for regulation of mortgage brokers and loan originators by the division of financial institutions. (SB3010 SD2)

