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# A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATORS.

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

1           SECTION 1. The purpose of this Act is to implement a  
2 regulatory system, to be effective July 1, 2010, for mortgage  
3 loan originators. Although the legislature has struggled with  
4 this issue for several years, the passage of the federal Secure  
5 and Fair Enforcement for Mortgage Licensing Act of 2008  
6 (S.A.F.E. Mortgage Licensing Act of 2008), 12 United States Code  
7 sections 5101 to 5116, necessitates immediate state action on  
8 this issue. Under the S.A.F.E. Mortgage Licensing Act, states  
9 that do not implement a sufficient regulatory system for  
10 mortgage loan originators will be subject to federal oversight  
11 and regulation of their residential mortgage industries. The  
12 legislature finds that it is in the best interest of this State  
13 and its residents for regulation of mortgage loan originators to  
14 remain the purview of the State.

15           The model act upon which this Act is based has been deemed  
16 to be compliant with the S.A.F.E. Mortgage Licensing Act by the  
17 United States Department of Housing and Urban Development. The  
18 legislature finds that this Act provides for an orderly



1 transition from the current licensing system under chapter 454,  
2 Hawaii Revised Statutes, to the new federally-mandated  
3 regulatory system that will become effective July 1, 2010. The  
4 legislature finds that this measure provides for an orderly  
5 one-year transition period where chapter 454 will continue to  
6 control licensing and oversight while the division of financial  
7 institutions of the department of commerce and consumer affairs  
8 enacts the necessary rules and procedures to fully implement the  
9 regulatory system created by this Act. The legislature further  
10 finds that the July 1, 2010 implementation of the new regulatory  
11 system created by this Act requires the cooperation of the  
12 commissioner of financial institutions. Therefore, the  
13 legislature respectfully asks that the commissioner of financial  
14 institutions collaborate openly and in good faith with the  
15 legislature to ensure a smooth transition to the new regulatory  
16 system, which shall become effective on July 1, 2010.

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

20 **"CHAPTER**  
21 **SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT**



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

3           "Advertisement" or "advertising" means:

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



1                   borrower will pay on the new residential mortgage  
2                   loan or reduce the interest rate on the  
3                   borrower's existing residential mortgage loan.

4           "Applicant" means an individual applying for the issuance  
5 of a license or a renewal of a license under this chapter.

6           "Clerical or support duties" include the following  
7 activities subsequent to the receipt of an application:

8           (1) The receipt, collection, distribution, and analysis of  
9           information for the processing or underwriting of a  
10           residential mortgage loan; and

11           (2) Communication with a borrower to obtain the  
12           information necessary for the processing or  
13           underwriting of a loan, to the extent that the  
14           communication does not include offering or negotiating  
15           loan rates or terms or counseling borrowers about  
16           residential mortgage loan rates or terms.

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

19           "Federal banking agencies" means the Board of Governors of  
20 the Federal Reserve System, the Comptroller of the Currency, the  
21 Office of Thrift Supervision, the National Credit Union  
22 Administration, and the Federal Deposit Insurance Corporation.



1 "Immediate family member" means a spouse, child, sibling,  
2 parent, grandparent, grandchild, stepparent, stepchild,  
3 stepsibling, and equivalent adoptive relationships.

4 "Individual" means a natural person.

5 "Insured depository institution" means the same as in 12  
6 United States Code Section 1813(c)(2); provided that it also  
7 includes any credit union whose deposits are insured by the  
8 National Credit Union Association.

9 "Loan processor or underwriter" means an individual who  
10 performs clerical or support duties as an employee at the  
11 direction of and subject to the supervision and instruction of a  
12 mortgage loan originator or a person who is exempt from  
13 licensing as a mortgage loan originator under this chapter.

14 "Mortgage loan originator" means an individual who for  
15 compensation or gain or in the expectation of compensation or  
16 gain:

- 17 (1) Takes a residential mortgage loan application; or  
18 (2) Offers or negotiates terms of a residential mortgage  
19 loan.

20 "Nationwide Mortgage Licensing System" means a mortgage  
21 licensing system developed and maintained by the Conference of  
22 State Bank Supervisors and the American Association of



1 Residential Mortgage Regulators for the licensing and  
2 registration of licensed mortgage loan originators.

3 "Nontraditional mortgage product" means any mortgage  
4 product other than a thirty-year fixed rate residential mortgage  
5 loan where the interest rate is fixed for the thirty-year term.

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

10 "Real estate brokerage activity" means any activity that  
11 involves offering or providing real estate brokerage services to  
12 the public, including:

- 13 (1) Acting as a real estate agent or real estate broker  
14 for a buyer, seller, lessor, or lessee of real  
15 property;
- 16 (2) Bringing together parties interested in the sale,  
17 purchase, lease, rental, or exchange of real property;
- 18 (3) Negotiating on behalf of any party, any portion of a  
19 contract relating to the sale, purchase, lease,  
20 rental, or exchange of real property other than in  
21 connection with providing financing with respect to  
22 any such transaction;



1 (4) Engaging in any activity for which a person is  
2 required to be registered or licensed as a real estate  
3 agent or real estate broker by the State; and

4 (5) Offering to engage in any activity, or act in any  
5 capacity, described in paragraphs (1), (2), (3), or  
6 (4).

7 "Registered mortgage loan originator" means any individual  
8 who:

9 (1) Meets the definition of mortgage loan originator and  
10 is an employee of:

11 (A) An insured depository institution;

12 (B) A subsidiary that is:

13 (i) Owned and controlled by an insured  
14 depository institution; and

15 (ii) Regulated by a federal banking agency; or

16 (C) An institution regulated by the Farm Credit  
17 Administration; and

18 (2) Is registered with, and maintains a unique identifier  
19 through, the Nationwide Mortgage Licensing System and  
20 Registry.

21 "Residential mortgage loan" means any loan primarily for  
22 personal, family, or household use that is secured by a



1 mortgage, deed of trust, or other equivalent consensual security  
2 interest on a dwelling as defined in Section 103(v) of the Truth  
3 in Lending Act, 15 United States Code Section 1601 et seq, or  
4 residential real estate.

5 "Residential real estate" means any real property located  
6 in this state, upon which a dwelling is constructed or intended  
7 to be constructed.

8 "Unique identifier" means a number or other identifier  
9 assigned by protocols established by the Nationwide Mortgage  
10 Licensing System.

11 § -2 Exemptions. This chapter shall not apply to the  
12 following:

- 13 (1) A registered mortgage loan originator, when acting for  
14 an insured depository institution, a subsidiary of an  
15 insured depository institution regulated by a federal  
16 banking agency, or an institution regulated by the  
17 Farm Credit Administration;
- 18 (2) Any individual who offers or negotiates terms of a  
19 residential mortgage loan with, or on behalf of, an  
20 immediate family member of the individual;





- 1           (3) Any individual who offers or negotiates terms of a  
2           residential mortgage loan secured by a dwelling that  
3           served as the individual's residence;
- 4           (4) A licensed attorney who negotiates the terms of a  
5           residential mortgage loan on behalf of a client as an  
6           ancillary matter to the attorney's representation of  
7           the client unless the attorney is compensated by a  
8           lender, a mortgage broker, or other mortgage loan  
9           originator or by an agent of a lender, mortgage  
10          broker, or other mortgage loan originator;
- 11          (5) An individual engaging solely in loan processor or  
12          underwriter activities; provided that an individual,  
13          including an independent contractor, who performs the  
14          services of a loan processor or underwriter shall not  
15          represent to the public, through advertising or other  
16          means of communicating or providing information,  
17          including the use of business cards, stationery,  
18          brochures, signs, rate lists, or other promotional  
19          items, that the individual can or will perform any of  
20          the activities of a mortgage loan originator, and any  
21          loan processor or underwriter, including an  
22          independent contractor, who advertises that the

1 individual can or will perform any of the activities  
2 of a mortgage loan originator or engages in the  
3 activities of a mortgage loan originator shall not be  
4 exempt under this chapter and shall obtain and  
5 maintain a license under this chapter and a valid  
6 unique identifier issued by the Nationwide Mortgage  
7 Licensing System;

8 (6) A person or entity that only performs real estate  
9 brokerage activities and is licensed or registered by  
10 the State unless the person or entity is compensated  
11 by a lender, a mortgage broker, or other mortgage loan  
12 originator or by an agent of the lender, mortgage  
13 broker, or other mortgage loan originator; or

14 (7) A person or entity solely involved in extensions of  
15 credit relating to timeshare plans, as the term is  
16 defined in Section 101(53D) of Title 11, United States  
17 Code.

18 § -3 Requirement of licensure. Effective August 1,  
19 2010, or such later date approved by the United States  
20 Department of Housing and Urban Development pursuant to the  
21 authority granted under Public Law 110-289, section 1508(e), an  
22 individual, unless specifically exempted from this chapter,



1 shall not engage in the business of a mortgage loan originator  
2 with respect to any dwelling located in this state without first  
3 obtaining and maintaining annually, a license under this  
4 chapter. Each licensed mortgage loan originator shall register  
5 with and maintain a valid unique identifier issued by the  
6 Nationwide Mortgage Licensing System, and shall submit to the  
7 Nationwide Mortgage Licensing System any reports that shall be  
8 in a form and contain information as the Nationwide Mortgage  
9 Licensing System may require.

10       **§ -4 License and registration; application; issuance.**

11       (a) Applicants for a license shall apply in a form as  
12 prescribed by the commissioner.

13       (b) To fulfill the purposes of this chapter, the  
14 commissioner shall establish relationships or contracts with the  
15 Nationwide Mortgage Licensing System or other entities  
16 designated by the Nationwide Mortgage Licensing System to  
17 collect and maintain records and process transaction fees or  
18 other fees related to licensees or other persons subject to this  
19 chapter.

20       (c) For the purpose and the extent necessary to  
21 participate in the Nationwide Mortgage Licensing System, the  
22 commissioner may waive or modify, in whole or in part, by rule



1 or order, any or all of the requirements of this chapter and to  
2 establish new requirements as reasonably necessary to  
3 participate in the Nationwide Mortgage Licensing System.

4 (d) In connection with an application for licensing as a  
5 mortgage loan originator, the applicant, at a minimum, shall  
6 furnish to the Nationwide Mortgage Licensing System information  
7 concerning the applicant's identity, including:

8 (1) Fingerprints for submission to the Federal Bureau of  
9 Investigation, and any governmental agency or entity  
10 authorized to receive the fingerprints for a state,  
11 national, and international criminal history  
12 background check; and

13 (2) Personal history and experience in a form prescribed  
14 by the Nationwide Mortgage Licensing System including  
15 the submission of authorization for the Nationwide  
16 Mortgage Licensing System and the commissioner to  
17 obtain:

18 (A) An independent credit report obtained from a  
19 consumer reporting agency described in Section  
20 603(p) of the Fair Credit Reporting Act, 15  
21 United States Code 1681 et seq; and



1 (B) Information related to any administrative, civil,  
2 or criminal findings by any governmental  
3 jurisdiction.

4 (e) The commissioner may use the Nationwide Mortgage  
5 Licensing System as an agent for requesting information from and  
6 distributing information to the Department of Justice or any  
7 governmental agency.

8 (f) The commissioner may use the Nationwide Mortgage  
9 Licensing System as an agent for requesting and distributing  
10 information to and from any source directed by the commissioner.

11 § -5 **Issuance of license.** The commissioner shall not  
12 issue a mortgage loan originator license unless the commissioner  
13 makes at a minimum the following findings:

14 (1) The applicant has never had a mortgage loan originator  
15 license revoked in any jurisdiction; provided that a  
16 subsequent formal vacation of a revocation shall not  
17 be deemed a revocation;

18 (2) The applicant has not been convicted of, or pled  
19 guilty or nolo contendere, or been granted a deferred  
20 acceptance of a guilty plea under chapter 853 to a  
21 felony in a domestic, foreign, or military court:



1 (A) During the seven-year period preceding the date  
2 of the application for licensing and  
3 registration; or

4 (B) At any time preceding the date of application, if  
5 the felony involved an act of fraud, dishonesty,  
6 breach of trust, or money laundering;

7 provided that any pardon of a conviction shall not be  
8 deemed a conviction for purposes of this section;

9 (3) The applicant has demonstrated financial  
10 responsibility, character, and general fitness to  
11 command the confidence of the community and to warrant  
12 a determination that the mortgage loan originator  
13 shall operate honestly, fairly, and efficiently  
14 pursuant to this chapter. For purposes of this  
15 paragraph, a person is not financially responsible  
16 when the person has shown a disregard in the  
17 management of the person's financial condition. A  
18 determination that an individual has not shown  
19 financial responsibility may be based on:

20 (A) Current outstanding judgments, except judgments  
21 solely as a result of medical expenses;



- 1 (B) Current outstanding tax liens or other government
- 2 liens and filings;
- 3 (C) Foreclosures within the past three years; and
- 4 (D) A pattern of seriously delinquent accounts within
- 5 the past three years;
- 6 (4) The applicant has completed the pre-licensing
- 7 education requirement described in section -6;
- 8 (5) The applicant has passed a written test that meets the
- 9 test requirements in section -7; and
- 10 (6) The applicant has met the surety bond requirement as
- 11 required in section -13.

12 § -6 Pre-licensing and re-licensing; education of  
13 mortgage loan originators. (a) A person shall complete at  
14 least twenty hours of pre-licensing education approved in  
15 accordance with subsection (b) that includes:

- 16 (1) Three hours of federal law and regulations;
- 17 (2) Three hours of ethics, that shall include instruction
- 18 on fraud, consumer protection, and fair lending
- 19 issues; and
- 20 (3) Two hours of training related to lending standards for
- 21 the nontraditional mortgage product marketplace.



1 (b) Pre-licensing education courses shall be reviewed and  
2 approved by the Nationwide Mortgage Licensing System based upon  
3 reasonable standards. Review and approval of a pre-licensing  
4 education course shall include review and approval of the course  
5 provider.

6 (c) Nothing in this section shall prohibit the use of any  
7 pre-licensing education course approved by the Nationwide  
8 Mortgage Licensing System that is provided by the employer of  
9 the applicant, an entity that is affiliated with the applicant  
10 by an agency contract, or any subsidiary or affiliate of the  
11 employer or entity.

12 (d) Pre-licensing education may be offered either in a  
13 classroom, online, or by any other means approved by the  
14 Nationwide Mortgage Licensing System.

15 (e) The pre-licensing education requirements approved by  
16 the Nationwide Mortgage Licensing System in subsection (a) for  
17 any state shall be accepted as credit towards completion of pre-  
18 licensing education requirements in this State.

19 (f) A person previously licensed under this chapter and  
20 applying to be licensed under this chapter shall prove to the  
21 satisfaction of the commissioner that the person has completed





1 all of the continuing education requirements for the year in  
2 which the license was last held.

3       § -7 **Testing of mortgage loan originators.** (a) In  
4 order to meet the passing of the written test requirement in  
5 section -5, an applicant shall pass, in accordance with the  
6 standards established under this section, a qualified written  
7 test developed by the Nationwide Mortgage Licensing System and  
8 administered by a test provider approved by the Nationwide  
9 Mortgage Licensing System based upon reasonable standards.

10       (b) A written test shall not be treated as a qualified  
11 written test for purposes of subsection (a) unless the test  
12 adequately measures the applicant's knowledge and comprehension  
13 in appropriate subject areas, including:

- 14       (1) Ethics;
- 15       (2) Federal law and regulations pertaining to mortgage  
16 origination;
- 17       (3) State law and rules pertaining to mortgage  
18 origination; and
- 19       (4) Federal and state law, rules and regulations,  
20 including instruction on fraud, consumer protection,  
21 the nontraditional mortgage marketplace, and fair  
22 lending issues.



1 (c) Nothing in this section shall prohibit a test provider  
2 approved by the Nationwide Mortgage Licensing System from  
3 providing a test at the location of the employer of the  
4 applicant, the location of any subsidiary or affiliate of the  
5 employer of the applicant, or the location of any entity with  
6 which the applicant holds an exclusive arrangement to conduct  
7 the business of a mortgage loan originator.

8 (d) An individual shall have passed a qualified written  
9 test if the individual achieves a test score of seventy-five per  
10 cent of the correct answers to questions or better. An  
11 individual may retake a test three consecutive times with each  
12 consecutive taking occurring at least thirty days after the  
13 preceding test. After failing three consecutive tests, an  
14 individual shall wait at least six months before taking the test  
15 again. A licensed mortgage loan originator who fails to  
16 maintain a valid license for a period of five years or longer  
17 not taking into account any time during which the individual is  
18 a registered mortgage loan originator, shall retake the test.

19 **§ -8 Standards for license renewal.** (a) The minimum  
20 standards for license renewal for mortgage loan originators  
21 shall include the following:



1 (1) The mortgage loan originator continues to meet the  
2 minimum standards for licensure under section -5;

3 (2) The mortgage loan originator has satisfied the annual  
4 continuing education requirements in section -9;  
5 and

6 (3) The mortgage loan originator has paid all required  
7 fees for renewal of the license.

8 (b) The license of a mortgage loan originator who fails to  
9 satisfy the minimum standards for license renewal shall expire.

10 The commissioner may adopt procedures for the reinstatement of  
11 expired licenses consistent with the standards established by  
12 the Nationwide Mortgage Licensing System.

13 § -9 Continuing education; mortgage loan originators.

14 (a) Each year, a licensed mortgage loan originator shall  
15 complete at least eight hours of education approved in  
16 accordance with subsection (b) that shall include at least:

17 (1) Three hours of federal law and regulations;

18 (2) Two hours of ethics that shall include instruction on  
19 fraud, consumer protection, and fair lending issues;  
20 and

21 (3) Two hours of training related to lending standards for  
22 the nontraditional mortgage product marketplace.



1 (b) For purposes of subsection (a), continuing education  
2 courses shall be reviewed and approved by the Nationwide  
3 Mortgage Licensing System based upon reasonable standards.  
4 Review and approval of a continuing education course shall  
5 include review and approval of the course provider.

6 (c) Nothing in this section shall prohibit the use of any  
7 education course that is approved by the Nationwide Mortgage  
8 Licensing System and provided by the employer of the mortgage  
9 loan originator, an entity that is affiliated with the mortgage  
10 loan originator by an agency contract, or any subsidiary or  
11 affiliate of the employer or entity.

12 (d) Continuing education may be offered either in a  
13 classroom, online, or by any other means approved by the  
14 nationwide mortgage licensing system and registry.

15 (e) A licensed mortgage loan originator:

16 (1) May only receive credit for a continuing education  
17 course in the year in which the course is taken,  
18 except for continuing education credits received  
19 pursuant to this chapter; and

20 (2) May not take the same approved course in the same or  
21 successive years to meet the annual requirements for  
22 continuing education.



1 (f) A licensed mortgage loan originator who is an approved  
2 instructor of an approved continuing education course may  
3 receive continuing education credit for the course taught at the  
4 rate of two hours credit for every one hour taught.

5 (g) Continuing education courses as described in  
6 subsection (a) and approved by the Nationwide Mortgage Licensing  
7 System for any state, that are successfully completed by a  
8 licensed mortgage originator, shall be accepted as credit  
9 towards completion of continuing education requirements in this  
10 state.

11 (h) A licensed mortgage loan originator who subsequently  
12 becomes unlicensed shall complete the continuing education  
13 requirements for the last year in which the license was held  
14 prior to issuance of a new or renewed license.

15 (i) A person meeting the requirements of  
16 section -8(a)(1) and (3) may make up any deficiency in  
17 continuing education as established by rule adopted by the  
18 commissioner.

19 § -10 **Authority to require license.** In addition to any  
20 other duties imposed upon the commissioner, the commissioner  
21 shall require mortgage loan originators to be licensed and  
22 registered through the Nationwide Mortgage Licensing System.



1 The commissioner is authorized to participate in the Nationwide  
2 Mortgage Licensing System. The commissioner may establish by  
3 rule pursuant to chapter 91, requirements for mortgage loan  
4 originators, including:

5 (1) Background checks of:

6 (A) Criminal history through fingerprint or other  
7 databases;

8 (B) Civil or administrative records;

9 (C) Credit history; and

10 (D) Any other source deemed necessary by the  
11 Nationwide Mortgage Licensing System and  
12 registry;

13 (2) Fees to apply for or renew licenses through the  
14 Nationwide Mortgage Licensing System;

15 (3) The setting or resetting as necessary of license  
16 renewal and reporting dates;

17 (4) Requirements for amending or surrendering a license;  
18 and

19 (5) Any other activity the commissioner deems necessary to  
20 participate in the Nationwide Mortgage Licensing  
21 System.



1           **§ -11 Nationwide Mortgage Licensing System; registry**  
2 **information; challenge process.** The commissioner shall  
3 establish a process by rule pursuant to chapter 91 whereby  
4 mortgage loan originators may challenge information entered into  
5 the Nationwide Mortgage Licensing System by the commissioner.

6           **§ -12 Enforcement authorities; violations; penalties.**

7 (a) In order to ensure the effective supervision and  
8 enforcement of this chapter, the commissioner may, pursuant to  
9 chapter 91:

10           (1) Deny, suspend, revoke, condition, or decline to renew  
11 a license because of a violation of this chapter,  
12 rules, an order, or a directive entered under this  
13 chapter;

14           (2) Deny, suspend, revoke, condition, or decline to renew  
15 a license if an applicant or licensed mortgage loan  
16 originator fails at any time to meet the requirements  
17 of section -6 or section -8, or withholds  
18 information or makes a material misstatement in an  
19 application for a license or renewal of a license;

20           (3) Order restitution against persons subject to this  
21 chapter for violations of this chapter;

22           (4) Impose fines on persons subject to this chapter; and



1 (5) Issue orders or directives under this chapter as  
2 follows:

3 (A) Order or direct persons subject to this chapter  
4 to cease and desist from conducting business,  
5 including immediate temporary orders to cease and  
6 desist;

7 (B) Order or direct persons subject to this chapter  
8 to cease any harmful activities or violations of  
9 this chapter, including immediate temporary  
10 orders to cease and desist;

11 (C) Enter immediate temporary orders to cease doing  
12 business under a license or interim license  
13 issued pursuant to the authority granted under  
14 this chapter if the commissioner determines that  
15 the license was erroneously granted or the  
16 licensee is currently in violation of this  
17 chapter; or

18 (D) Order or direct any other affirmative action as  
19 the commissioner deems necessary.

20 (b) The commissioner may impose a civil penalty on a  
21 mortgage loan originator or person subject to this chapter if  
22 the commissioner finds on the record after notice and





1 opportunity for hearing that the mortgage loan originator or  
2 person subject to this chapter has violated or failed to comply  
3 with any requirement of this chapter or any rule prescribed by  
4 the commissioner under this chapter or order issued under the  
5 authority of this chapter.

6 (c) The maximum penalty for each act or omission described  
7 in subsection (b) shall be \$25,000.

8 (d) Each violation or failure to comply with any directive  
9 or order of the commissioner shall be a separate and distinct  
10 violation.

11 **§ -13 Surety bond; required.** (a) Each mortgage loan  
12 originator shall be covered by a surety bond in accordance with  
13 this section. In the event that the mortgage loan originator is  
14 an employee or exclusive agent of a person subject to this  
15 chapter, the surety bond of the person may be used in lieu of  
16 the mortgage loan originator's surety bond.

17 (b) The surety bond shall provide coverage for each  
18 mortgage loan originator in an amount prescribed in subsection

19 (c). The surety bond shall be in a form as prescribed by the  
20 commissioner. The commissioner may adopt rules pursuant to  
21 chapter 91 with respect to the requirements for the surety bonds  
22 necessary to accomplish the purposes of this chapter.



1 (c) The penal sum of the surety bond shall be maintained  
2 in an amount that reflects the dollar amount of loans originated  
3 as determined by the commissioner.

4 (d) When an action is commenced on a licensee's bond, the  
5 commissioner may require the filing of a new bond.

6 (e) Immediately upon recovery of any action on the bond,  
7 the commissioner may require the filing of a new bond.

8 § -14 Confidentiality. (a) Except as otherwise  
9 provided in Public Law 110-289, Section 1512, the requirements  
10 under any federal or state law regarding the privacy or  
11 confidentiality of any information or material provided to the  
12 Nationwide Mortgage Licensing System, and any privilege arising  
13 under federal or state law, including the rules of any federal  
14 or state court, with respect to the information or material  
15 shall continue to apply to the information or material after the  
16 information or material has been disclosed to the Nationwide  
17 Mortgage Licensing System. The information and material may be  
18 shared with all state and federal regulatory officials with  
19 mortgage industry oversight authority without the loss of  
20 privilege or the loss of confidentiality protections provided by  
21 federal or state law.



1 (b) For these purposes, the commissioner is authorized to  
2 enter into agreements or sharing arrangements with other  
3 governmental agencies, the Conference of State Bank Supervisors,  
4 the American Association of Residential Mortgage Regulators, or  
5 other associations representing governmental agencies as  
6 established by rule or order of the commissioner.

7 (c) Information or material that is subject to a privilege  
8 or confidentiality under subsection (a) shall not be subject to:

9 (1) Disclosure under any federal or state law governing  
10 the disclosure to the public of information held by an  
11 officer or an agency of the federal government or a  
12 state; or

13 (2) Subpoena or discovery, or admission into evidence, in  
14 any private civil action or administrative process,  
15 unless with respect to any privilege held by the  
16 Nationwide Mortgage Licensing System applicable to the  
17 information or material; provided that the person to  
18 whom the information or material pertains waives, in  
19 whole or in part, in the discretion of such person,  
20 that privilege.

21 (d) Notwithstanding chapter 92F, the examination process  
22 and related information and documents, including the reports of



1 examination, are confidential and are not subject to discovery  
2 or disclosure in civil or criminal lawsuits.

3 (e) Notwithstanding any law to the contrary, the  
4 disclosure of confidential supervisory information or any  
5 information or material described in subsection (a) that is  
6 inconsistent with subsection (a) shall be superseded by the  
7 requirements of this section.

8 (f) This section shall not apply to information or  
9 material relating to the employment history of, and publicly  
10 adjudicated disciplinary and enforcement actions against,  
11 mortgage loan originators that are included in the Nationwide  
12 Mortgage Licensing System for access by the public.

13 § -15 Investigation and examination authority. (a) In  
14 addition to any other authority under this chapter, the  
15 commissioner shall have the authority to conduct investigations  
16 and examinations. The commissioner may access, receive, and use  
17 any books, accounts, records, files, documents, information, or  
18 evidence, including:

- 19 (1) Criminal, civil, and administrative history  
20 information, including nonconviction data under  
21 chapter 853;



1           (2) Personal history and experience information including  
2           independent credit reports obtained from a consumer  
3           reporting agency described in Section 603(p) of the  
4           Fair Credit Reporting Act; and

5           (3) Any other documents, information, or evidence the  
6           commissioner deems relevant to the inquiry or  
7           investigation, regardless of the location, possession,  
8           control, or custody of the documents, information, or  
9           evidence.

10          (b) For the purposes of investigating violations or  
11         complaints arising under this chapter, or for the purposes of  
12         examination, the commissioner may review, investigate, or  
13         examine any licensed mortgage loan originator, individual, or  
14         person subject to this chapter, as often as necessary in order  
15         to carry out the purposes of this chapter. The commissioner may  
16         direct, subpoena, or order the attendance of, and examine under  
17         oath all persons whose testimony may be required about loans or  
18         the business or subject matter of any examination or  
19         investigation, and may direct, subpoena, or order the person to  
20         produce books, accounts, records, files, and any other documents  
21         the commissioner deems relevant to the inquiry.



1 (c) Each licensed mortgage loan originator, individual, or  
2 person subject to this chapter shall provide to the commissioner  
3 upon request, the books and records relating to the operations  
4 of the licensee, individual, or person subject to this chapter.  
5 The commissioner shall have access to the books and records and  
6 shall be permitted to interview the officers, principals,  
7 mortgage loan originators, employees, independent contractors,  
8 agents, and customers of the licensed mortgage loan originator,  
9 individual, or person subject to this chapter concerning their  
10 business.

11 (d) Each licensed mortgage loan originator, individual, or  
12 person subject to this chapter shall make or compile reports or  
13 prepare other information as directed by the commissioner in  
14 order to carry out the purposes of this section, including:

- 15 (1) Accounting compilations;  
16 (2) Information lists and data concerning loan  
17 transactions in a format prescribed by the  
18 commissioner; or  
19 (3) Other information deemed necessary to carry out the  
20 purposes of this section.

21 (e) In making any examination or investigation authorized  
22 by this chapter, the commissioner may control access to any



1 documents and records of the licensed mortgage loan originator  
2 or person under examination or investigation. The commissioner  
3 may take possession of the documents and records or place a  
4 person in exclusive charge of the documents and records in the  
5 place where they are usually kept. During the period of  
6 control, no individual or person shall remove or attempt to  
7 remove any of the documents and records except pursuant to a  
8 court order or with the consent of the commissioner. Unless the  
9 commissioner has reasonable grounds to believe the documents or  
10 records of the licensed mortgage loan originator have been, or  
11 are at risk of being altered or destroyed for purposes of  
12 concealing a violation of this chapter, the licensed mortgage  
13 loan originator or owner of the documents and records shall have  
14 access to the documents or records as necessary to conduct its  
15 ordinary business affairs.

16 (f) The commissioner may:

17 (1) Retain attorneys, accountants, or other professionals  
18 and specialists, who may be exempt from chapter 76, as  
19 examiners, auditors, or investigators to conduct or  
20 assist in the conduct of examinations or  
21 investigations;



- 1           (2) Enter into agreements or relationships with other  
2           government officials or regulatory associations in  
3           order to improve efficiencies and reduce regulatory  
4           burden by sharing resources, standardized or uniform  
5           methods or procedures, and documents, records,  
6           information, or evidence obtained under this section;
- 7           (3) Use, hire, contract, or employ public or privately  
8           available analytical systems, methods, or software to  
9           examine or investigate the licensed mortgage loan  
10          originator, individual, or person subject to this  
11          chapter;
- 12          (4) Accept and rely on examination or investigation  
13          reports made by other government officials, within or  
14          without this State; and
- 15          (5) Accept audit reports made by an independent certified  
16          public accountant for the licensed mortgage loan  
17          originator, individual, or person subject to this  
18          chapter in the course of that part of the examination  
19          covering the same general subject matter as the audit  
20          and may incorporate the audit report in the report of  
21          the examination, report of investigation, or other  
22          writing of the commissioner.





1 (g) The authority of this section shall remain in effect,  
2 whether such licensed mortgage loan originator, individual, or  
3 person subject to this chapter acts or claims to act under any  
4 licensing or registration law of this State, or claims to act  
5 without such authority.

6 (h) No licensed mortgage loan originator, individual, or  
7 person subject to investigation or examination under this  
8 section may knowingly withhold, abstract, remove, mutilate,  
9 destroy, or secrete any books, records, computer records, or  
10 other information.

11 (i) The commissioner may charge an examination fee based  
12 upon the cost per hour per examiner for all mortgage loan  
13 originators examined by the commissioner or the commissioner's  
14 staff. The hourly fee shall be \$40 or an amount as the  
15 commissioner shall establish by rule pursuant to chapter 91.

16 § -16 **Mortgage call reports.** Each licensed mortgage  
17 originator shall submit to the Nationwide Mortgage Licensing  
18 System reports of condition, using the form entitled "REPORT OF  
19 CONDITION", which shall be in such form and contain such  
20 information as the Nationwide Mortgage Licensing System may  
21 require.



1           §   -17   **Prohibited practices.** It shall be a violation of  
2 this chapter for a mortgage loan originator to:

3           (1) Directly or indirectly employ any scheme, device, or  
4           artifice to defraud or mislead borrowers or lenders or  
5           to defraud any person;

6           (2) Engage in any unfair or deceptive practice toward any  
7           person;

8           (3) Obtain property by fraud or misrepresentation;

9           (4) Solicit or enter into any contract with a borrower  
10          that provides in substance that the person or  
11          individual subject to this chapter may earn a fee or  
12          commission through "best efforts" to obtain a loan  
13          even though no loan is actually obtained for the  
14          borrower;

15          (5) Solicit, advertise, or enter into a contract for  
16          specific interest rates, points, or other financing  
17          terms unless the terms are actually available at the  
18          time of soliciting, advertising, or contracting;

19          (6) Conduct any business covered by this chapter without  
20          holding a valid license as required under this  
21          chapter, or assist or aid and abet any person in the



- 1           conduct of business under this chapter without a valid  
2           license as required under this chapter;
- 3           (7) Fail to make disclosures as required by this chapter  
4           and any other applicable state or federal law  
5           including rules or regulations thereunder;
- 6           (8) Fail to comply with this chapter or rules adopted  
7           under this chapter, or fail to comply with any other  
8           state or federal law, including the rules and  
9           regulations adopted thereunder, applicable to any  
10          business authorized or conducted pursuant to this  
11          chapter;
- 12          (9) Make, in any manner, any false or deceptive statement  
13          or representation, including with regard to the rates,  
14          points, or other financing terms or conditions for a  
15          residential mortgage loan, or engage in bait and  
16          switch advertising;
- 17          (10) Negligently make any false statement or knowingly and  
18          wilfully make any omission of material fact in  
19          connection with any information or reports filed with  
20          a governmental agency or the Nationwide Mortgage  
21          Licensing System or in connection with any



- 1 investigation conducted by the commissioner or another  
2 government agency;
- 3 (11) Make any payment, threat, or promise, directly or  
4 indirectly, to any person for the purposes of  
5 influencing the independent judgment of the person in  
6 connection with a residential mortgage loan, or make  
7 any payment, threat, or promise, directly or  
8 indirectly, to any appraiser of a property for the  
9 purpose of influencing the independent judgment of the  
10 appraiser with respect to the value of a property;
- 11 (12) Collect, charge, attempt to collect or charge, or use  
12 or propose any agreement purporting to collect or  
13 charge any fee prohibited by this chapter;
- 14 (13) Cause or require a borrower to obtain property  
15 insurance coverage in an amount that exceeds the  
16 replacement cost of the improvements as established by  
17 the property insurer;
- 18 (14) Fail to truthfully account for moneys belonging to a  
19 party to a residential mortgage loan transaction; or
- 20 (15) Deliver a misleading or deceptive communication or  
21 advertisement, whether written, electronic, or oral,  
22 when marketing or soliciting a residential mortgage



1 loan. A communication or advertisement that uses the  
2 name or trademark of a financial institution as  
3 defined in section 412:1-109 or its affiliates or  
4 subsidiaries, or infers that the communication or  
5 advertisement is from, endorsed by, is related to, or  
6 is the responsibility of the financial institution is  
7 a misleading or deceptive communication. Advertising  
8 that a specific interest rate, points, or financial  
9 terms are available when the rates, points, or  
10 financial terms are not actually available is a  
11 misleading or deceptive communication.

12 § -18 Powers of commissioner. (a) The commissioner may  
13 adopt rules pursuant to chapter 91 as the commissioner deems  
14 necessary for the administration of this chapter.

15 (b) In addition to any other powers provided by law, the  
16 commissioner shall have the authority to:

- 17 (1) Administer and enforce the provisions and requirements  
18 of this chapter;
- 19 (2) Adopt, amend, or repeal rules and issue declaratory  
20 rulings or informal nonbinding interpretations;



- 1           (3) Develop requirements for licensure through rules,  
2           including establishing the content of the written  
3           tests required under section     -7;
- 4           (4) Investigate and conduct hearings regarding any  
5           violation of this chapter or any rule or order of, or  
6           agreement with, the commissioner;
- 7           (5) Create fact-finding committees that may make  
8           recommendations to the commissioner for the  
9           commissioner's deliberations;
- 10          (6) Require an applicant or any of its officers,  
11          directors, employees, partners, members, managers, and  
12          agents to disclose their relevant criminal history and  
13          request a criminal history record check in accordance  
14          with chapter 846;
- 15          (7) Contract with qualified persons, including  
16          investigators who may be exempt from chapter 76 and  
17          who shall assist the commissioner in exercising the  
18          commissioner's powers and duties;
- 19          (8) Require that all fees, fines, and charges collected by  
20          the commissioner under this chapter be deposited into  
21          the compliance resolution fund established pursuant to  
22          section 26-9(o);



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

8           (10) Require a mortgage loan originator to comply with any  
9           rule, guidance, guideline, statement, supervisory  
10          policy or any similar proclamation issued or adopted  
11          by the Federal Deposit Insurance Corporation to the  
12          same extent and in the same manner as a bank chartered  
13          by the State or in the alternative, any policy  
14          position of the Conference of State Bank Supervisors.

15          § -19 **Unique identifier shown.** The unique identifier of  
16 any person originating a residential mortgage loan shall be  
17 clearly shown on all residential mortgage loan application  
18 forms, solicitations, or advertisements, including business  
19 cards or websites, and any other documents as established by  
20 rule or order of the commissioner.

21          § -20 **Report to Nationwide Mortgage Licensing System.**

22 Notwithstanding any other law to the contrary, the commissioner



1 is required to regularly report violations of this chapter, as  
2 well as enforcement actions and other relevant information, to  
3 the Nationwide Mortgage Licensing System subject to the  
4 confidentiality provisions contained in section -14.

5 § -21 Fees and costs. (a) Each application for a  
6 mortgage loan originator license shall be accompanied by an  
7 application fee of \$250, or an amount as the commissioner shall  
8 establish by rule pursuant to chapter 91.

9 (b) Upon obtaining approval for a license, an initial  
10 license fee shall be paid to the commissioner in the amount of  
11 \$175 or an amount as the commissioner shall establish by rule  
12 pursuant to chapter 91.

13 (c) By December 31 of each year, every mortgage broker and  
14 loan originator licensed under this chapter shall pay an annual  
15 license renewal fee of \$325, or an amount as the commissioner  
16 shall establish by rule pursuant to chapter 91."

17 SECTION 3. 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, loan originator licensed under  
8 chapter \_\_\_\_\_, or as a real estate collection servicing agent."

9 SECTION 4. Section 454-2, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§454-2 Exemptions. This chapter does not apply to the  
12 following:

13 (1) Banks, operating subsidiaries of a bank established  
14 and operating under section 412:5-203, trust  
15 companies, savings associations, pension trusts,  
16 credit unions, insurance companies, financial services  
17 loan companies, or federally licensed small business  
18 investment companies, authorized under any law of this  
19 State or of the United States to do business in the  
20 State;



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



1 financial services loan company, or other financial  
2 institution registered to do business in the State of  
3 Hawaii agrees to sell mortgage loans or obtain funding  
4 therefor, with or without the transfer of servicing  
5 rights, to an institutional investor;

6 (6) Foreign lender as defined in section 207-11; [~~and~~]

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

12 (A) The acts or conduct of a developer's authorized  
13 representative shall be deemed to be the acts or  
14 conduct of the developer for the purposes of  
15 section 454-4; and

16 (B) If the person engages in acts or conduct  
17 prohibited under section 454-4(a), the acts or  
18 conduct shall constitute grounds for disciplinary  
19 action under section 467-14 [~~-~~]; and

20 (8) An individual licensed as a mortgage loan originator  
21 under chapter ."



1 SECTION 5. Section 454-3, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

3 "(e) All fees shall be established and adopted by the  
4 director in accordance with chapter 91 and shall be deposited  
5 into the compliance resolution fund established pursuant to  
6 section 26-9(o) [-]; provided that, in order to establish  
7 regulatory practices for residential mortgage lending, a  
8 surcharge of \$100 shall be charged to every mortgage broker and  
9 mortgage solicitor, which surcharge shall be due on December 31,  
10 2009. Failure of any mortgage broker or mortgage solicitor to  
11 pay the biennial renewal fee on or before December 31 of an  
12 even-numbered year or the surcharge shall constitute an  
13 automatic forfeiture of the license. The forfeited license may  
14 be restored; provided that application for restoration is made  
15 within six months of the forfeiture and a penalty fee is paid in  
16 addition to the delinquent license fee or surcharge. A licensee  
17 who fails to restore a license as provided in this subsection  
18 shall apply as a new applicant."

19 SECTION 6. Section 477E-2, Hawaii Revised Statutes, is  
20 amended by amending the definition of "creditor" to read as  
21 follows:



1            "Creditor" means any bank; savings and loan association;  
2 trust company; financial services loan company; credit union;  
3 mortgage banker, broker, or solicitor; mortgage loan originator;  
4 pawnbroker; mutual benefit society or fraternal benefit society;  
5 debt adjuster; the issuer of a credit card as defined in section  
6 708-800; any person who initiates, extends, renews, or continues  
7 loans of money or credit; any person who regularly arranges for  
8 the initiation, extension, renewal, or continuation of a loan of  
9 money or credit; or any assignee of an original creditor who  
10 participates in the decision to grant, extend, renew, or to  
11 continue [~~such~~] a loan of money or credit."

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

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

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

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



1 direct mental health services as provided by section  
2 321-171.5;

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

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

21 (5) The counties on employees and prospective employees  
22 who may be in positions that place them in close



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



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





- 1           (16) The department of commerce and consumer affairs on  
2                    applicants for private detective or private guard  
3                    licensure as provided by section 463-9;
- 4           (17) Private schools and designated organizations on  
5                    employees and prospective employees who may be in  
6                    positions that necessitate close proximity to  
7                    children; provided that private schools and designated  
8                    organizations receive only indications of the states  
9                    from which the national criminal history record  
10                  information was provided as provided by section  
11                  302C-1;
- 12          (18) The public library system on employees and prospective  
13                  employees whose positions place them in close  
14                  proximity to children as provided by section  
15                  302A-601.5;
- 16          (19) The State or any of its branches, political  
17                  subdivisions, or agencies on applicants and employees  
18                  holding a position that has the same type of contact  
19                  with children, vulnerable adults, or persons committed  
20                  to a correctional facility as other public employees  
21                  who hold positions that are authorized by law to



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



1 of providing home and community-based services, as  
2 provided by section 346-97;

3 (24) The department of commerce and consumer affairs on  
4 proposed directors and executive officers of a bank,  
5 savings bank, savings and loan association, trust  
6 company, and depository financial services loan  
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on  
9 proposed directors and executive officers of a  
10 nondepository financial services loan company as  
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the  
13 original chartering applicants and proposed executive  
14 officers of a credit union as provided by section  
15 412:10-103;

16 [+](27)[+] The department of commerce and consumer affairs on:

17 (A) Each principal of every non-corporate applicant  
18 for a money transmitter license; and

19 (B) The executive officers, key shareholders, and  
20 managers in charge of a money transmitter's  
21 activities of every corporate applicant for a  
22 money transmitter license,



1 as provided by section 489D-9; [~~and~~]  
 2 (28) The department of commerce and consumer affairs on an  
 3 applicant for a mortgage loan originator's license as  
 4 provided by chapter \_\_\_\_\_ ; and  
 5 [~~+(28)+~~] (29) Any other organization, entity, or the State, its  
 6 branches, political subdivisions, or agencies as may  
 7 be authorized by state law."

8 SECTION 8. Effective August 1, 2010:

- 9 (1) No new license shall be issued and no license renewal  
 10 shall be effected under chapter 454, Hawaii Revised  
 11 Statutes; and  
 12 (2) An individual who is subject to this Act shall be  
 13 required to be licensed under chapter \_\_\_\_\_ , Hawaii  
 14 Revised Statutes, by such later date approved by the  
 15 United States Department of Housing and Urban  
 16 Development, pursuant to the authority granted under  
 17 Public Law 110-289, section 1508(e). As of the date  
 18 that an individual is required to be licensed under  
 19 chapter \_\_\_\_\_ , Hawaii Revised Statutes, the remaining  
 20 pro rata balance of the fees paid by the individual  
 21 under chapter 454, Hawaii Revised Statutes, shall be  
 22 applied to the individual's fees due under



1 chapter , Hawaii Revised Statutes, until  
2 exhausted.

3 SECTION 9. An individual shall not be subject to chapter  
4 454, Hawaii Revised Statutes, upon the effective date of the  
5 individual's license under the new chapter established under  
6 this Act; provided that this section shall not affect rights and  
7 duties that have matured, penalties that were incurred, and  
8 proceedings that were begun before the effective date of the  
9 individual's license under this Act.

10 SECTION 10. The commissioner of financial institutions  
11 shall prepare a report detailing the implementation of this Act.  
12 The report shall include an evaluation of administrative rules  
13 necessary for the implementation of this Act, budget  
14 recommendations, requests for staff and resources, developments  
15 in federal law and regulations that affect the implementation of  
16 this Act, and guidance or recommendations put forth by the  
17 United States Department of Housing and Urban Development. The  
18 commissioner of financial institutions shall report findings,  
19 recommendations, and any proposed amendments or additions to  
20 this Act to the legislature no later than twenty days prior to  
21 the convening of the regular session of 2010.



1 SECTION 11. There is appropriated out of the compliance  
2 resolution fund established under section 26-9(o), Hawaii  
3 Revised Statutes, the sum of \$159,400 or so much thereof as may  
4 be necessary for fiscal year 2009-2010 to carry out the purposes  
5 of this Act.

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

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

10 SECTION 13. This Act shall take effect on July 1, 2009;  
11 provided that sections 2, 3, 4, 6, and 7 shall take effect on  
12 July 1, 2010.



S.B. NO. 1218  
S.D. 2  
H.D. 2  
C.D. 1

**Report Title:**

Mortgage Brokers; Mortgage Loan Originator

**Description:**

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage loan originators. Exempts mortgage loan originators from chapter 454, HRS, relating to mortgage brokers and solicitors. (CD1)

