
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 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 SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

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

8 "Advertisement" or "advertising" means:

- 9 (1) Issuing any card, sign, or device to any person;
- 10 (2) Causing, permitting, or allowing the placement of any
11 sign or marking on or in any building, vehicle, or
12 structure;
- 13 (3) Placing an advertisement in any newspaper, magazine,
14 or on the Internet;
- 15 (4) Listing or advertising in any directory under a
16 classification or heading that includes the words
17 "mortgage loan originator," or the like;



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

14 "Agent" means a person who acts with the consent and on
15 behalf of a mortgage loan originator, and is subject to the
16 mortgage loan originator's direct control.

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

19 "Borrower" means a person who has applied for or obtained a
20 residential mortgage loan from or through a mortgage loan
21 originator, or from or through a person required to be licensed
22 as a mortgage loan originator under this chapter.



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

- 3 (1) The receipt, collection, distribution, and analysis of
4 information for the processing or underwriting of a
5 residential mortgage loan; and
6 (2) Communication with a borrower to obtain the
7 information necessary for the processing or
8 underwriting of a loan, to the extent that the
9 communication does not include offering or negotiating
10 loan rates or terms or counseling borrowers about
11 residential mortgage loan rates or terms.

12 "Commissioner" means the commissioner of financial
13 institutions.

14 "Federal banking agencies" means the Board of Governors of
15 the Federal Reserve System, the Comptroller of the Currency, the
16 Office of Thrift Supervision, the National Credit Union
17 Administration, and the Federal Deposit Insurance Corporation.

18 "Immediate family member" means a spouse, child, sibling,
19 parent, grandparent, grandchild, stepparent, stepchild,
20 stepsibling, and equivalent adoptive relationships.

21 "Insured depository institution" means the same as in 12
22 United States Code Section 1813(c)(2); provided that it also



1 includes any credit union whose deposits are insured by the
2 National Credit Union Association.

3 "Loan processor or underwriter" means an individual who
4 performs clerical or support duties as an employee at the
5 direction of and subject to the supervision and instruction of a
6 mortgage loan originator or a person who is exempt from
7 licensing as a mortgage loan originator under this chapter.

8 "Mortgage loan origination agreement" means a written
9 agreement under which a mortgage loan originator agrees to
10 obtain a residential mortgage loan for the borrower or assist
11 the borrower in obtaining a residential mortgage loan and does
12 not include a promissory note and mortgage or any other document
13 or instrument evidencing or securing the residential mortgage
14 loan.

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

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

21 "Nationwide Mortgage Licensing System" means a mortgage
22 licensing system developed and maintained by the Conference of



1 State Bank Supervisors and the American Association of
2 Residential Mortgage Regulators for the licensing and
3 registration of licensed mortgage loan originators.

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

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

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

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



1 connection with providing financing with respect to
2 any such transaction;

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

6 (5) Offering to engage in any activity, or act in any
7 capacity, described in paragraphs (1), (2), (3), or
8 (4).

9 "Registered mortgage loan originator" means any individual
10 who:

11 (1) Meets the definition of mortgage loan originator and
12 is an employee of:

13 (A) An insured depository institution;

14 (B) A subsidiary that is:

15 (i) Owned and controlled by an insured
16 depository institution; and

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

18 (C) An institution regulated by the Farm Credit
19 Administration; and

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



1 "Residential mortgage loan" means any loan primarily for
2 personal, family, or household use that is secured by a
3 mortgage, deed of trust, or other equivalent consensual security
4 interest on a dwelling as defined in Section 103(v) of the Truth
5 in Lending Act, 15 United States Code Section 1601 et seq, or
6 residential real estate.

7 "Residential real estate" means any real property located
8 in this State, upon which a dwelling is constructed or intended
9 to be constructed.

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

13 § -2 Exemptions. This chapter shall not apply to the
14 following:

- 15 (1) A registered mortgage loan originator, when acting for
16 an insured depository institution, a subsidiary of an
17 insured depository institution regulated by a federal
18 banking agency, or an institution regulated by the
19 Farm Credit Administration;
- 20 (2) Any individual who offers or negotiates terms of a
21 residential mortgage loan with, or on behalf of, an
22 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. An individual, unless
19 specifically exempted from this chapter, shall not engage in the
20 business of a mortgage loan originator with respect to any
21 dwelling located in this State without first obtaining and
22 maintaining annually, a license under this chapter. Each



1 licensed mortgage loan originator shall register with and
2 maintain a valid unique identifier issued by the Nationwide
3 Mortgage Licensing System, and shall submit to the Nationwide
4 Mortgage Licensing System any reports that shall be in a form
5 and contain information as the Nationwide Mortgage Licensing
6 System may require.

7 **§ -4 License and registration; application; issuance.**

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

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

17 (c) For the purpose and the extent necessary to
18 participate in the Nationwide Mortgage Licensing System, the
19 commissioner may waive or modify, in whole or in part, by rule
20 or order, any or all of the requirements of this chapter and to
21 establish new requirements as reasonably necessary to
22 participate in the Nationwide Mortgage Licensing System.



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

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

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

15 (A) An independent credit report obtained from a
16 consumer reporting agency described in Section
17 603(p) of the Fair Credit Reporting Act, 15
18 United States Code 1681 et seq; and

19 (B) Information related to any administrative, civil,
20 or criminal findings by any governmental
21 jurisdiction.



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

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

8 § -5 **Issuance of license.** The commissioner shall not
9 issue a mortgage loan originator license unless the commissioner
10 makes at a minimum the following findings:

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

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

19 (A) During the seven-year period preceding the date
20 of the application for licensing and
21 registration; or



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

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

6 (3) The applicant has demonstrated financial
7 responsibility, character, and general fitness to
8 command the confidence of the community and to warrant
9 a determination that the mortgage loan originator
10 shall operate honestly, fairly, and efficiently
11 pursuant to this chapter.

12 For purposes of this section, a person is not
13 financially responsible when the person has shown a
14 disregard in the management of the person's financial
15 condition. A determination that an individual has not
16 shown financial responsibility may be based on:

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

19 (B) Current outstanding tax liens or other government
20 liens and filings;

21 (C) Foreclosures within the past three years; and



1 (D) A pattern of seriously delinquent accounts within
2 the past three years;

3 (4) The applicant has completed the pre-licensing
4 education requirement described in section -6;

5 (5) The applicant has passed a written test that meets the
6 test requirements in section -7; and

7 (6) The applicant has met the surety bond requirement as
8 required in section -13.

9 § -6 Pre-licensing and re-licensing; education of
10 mortgage loan originators. (a) A person shall complete at
11 least twenty hours of pre-licensing education approved in
12 accordance with subsection (b) that includes:

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

14 (2) Three hours of ethics, that shall include instruction
15 on fraud, consumer protection, and fair lending
16 issues; and

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

19 (b) Pre-licensing education courses shall be reviewed and
20 approved by the Nationwide Mortgage Licensing System based upon
21 reasonable standards. Review and approval of a pre-licensing



1 education course shall include review and approval of the course
2 provider.

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

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

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

16 (f) A person previously licensed under this chapter and
17 applying to be licensed under this chapter shall prove to the
18 satisfaction of the commissioner that the person has completed
19 all of the continuing education requirements for the year in
20 which the license was last held.

21 § -7 Testing of mortgage loan originators. (a) In order
22 to meet the passing of the written test requirement in section



1 -5, an applicant shall pass, in accordance with the standards
2 established under this section, a qualified written test
3 developed by the Nationwide Mortgage Licensing System and
4 administered by a test provider approved by the Nationwide
5 Mortgage Licensing System based upon reasonable standards.

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

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

19 (c) Nothing in this section shall prohibit a test provider
20 approved by the Nationwide Mortgage Licensing System from
21 providing a test at the location of the employer of the
22 applicant, the location of any subsidiary or affiliate of the



1 employer of the applicant, or the location of any entity with
2 which the applicant holds an exclusive arrangement to conduct
3 the business of a mortgage loan originator.

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

15 **§ -8 Standards for license renewal.** (a) The minimum
16 standards for license renewal for mortgage loan originators
17 shall include the following:

- 18 (1) The mortgage loan originator continues to meet the
19 minimum standards for licensure under section -5;
- 20 (2) The mortgage loan originator has satisfied the annual
21 continuing education requirements in section -9;
- 22 and



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

3 (b) The license of a mortgage loan originator who fails to
4 satisfy the minimum standards for license renewal shall expire.
5 The commissioner may adopt procedures for the reinstatement of
6 expired licenses consistent with the standards established by
7 the Nationwide Mortgage Licensing System.

8 § -9 Continuing education; mortgage loan originators.

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

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

13 (2) Two hours of ethics that shall include instruction on
14 fraud, consumer protection, and fair lending issues;
15 and

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

18 (b) For purposes of subsection (a), continuing education
19 courses shall be reviewed and approved by the Nationwide
20 Mortgage Licensing System based upon reasonable standards.
21 Review and approval of a continuing education course shall
22 include review and approval of the course provider.



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

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

10 (e) A licensed mortgage loan originator:

11 (1) May only receive credit for a continuing education
12 course in the year in which the course is taken,
13 except for continuing education credits received
14 pursuant to this chapter; and

15 (2) May not take the same approved course in the same or
16 successive years to meet the annual requirements for
17 continuing education.

18 (f) A licensed mortgage loan originator who is an approved
19 instructor of an approved continuing education course may
20 receive credit for the course taught at the rate of two hours
21 credit for every one hour taught.



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

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

11 (i) A person meeting the requirements of
12 section -8(a)(1) and (3) may make up any deficiency in
13 continuing education as established by rule adopted by the
14 commissioner.

15 § -10 **Authority to require license.** In addition to any
16 other duties imposed upon the commissioner, the commissioner
17 shall require mortgage loan originators to be licensed and
18 registered through the Nationwide Mortgage Licensing System.
19 The commissioner is authorized to participate in the Nationwide
20 Mortgage Licensing System. The commissioner may establish by
21 rule pursuant to chapter 91, requirements for mortgage loan
22 originators, including:



- 1 (1) Background checks of:
- 2 (A) Criminal history through fingerprint or other
- 3 databases;
- 4 (B) Civil or administrative records;
- 5 (C) Credit history; and
- 6 (D) Any other source deemed necessary by the
- 7 nationwide mortgage licensing system and
- 8 registry;
- 9 (2) Fees to apply for or renew licenses through the
- 10 Nationwide Mortgage Licensing System;
- 11 (3) The setting or resetting as necessary of license
- 12 renewal and reporting dates;
- 13 (4) Requirements for amending or surrendering a license;
- 14 and
- 15 (5) Any other activity the commissioner deems necessary to
- 16 participate in the Nationwide Mortgage Licensing
- 17 System.

18 § -11 Nationwide Mortgage Licensing System; registry

19 information; challenge process. The commissioner shall

20 establish a process by rule pursuant to chapter 91 whereby

21 mortgage loan originators may challenge information entered into

22 the Nationwide Mortgage Licensing System by the commissioner.



1 § -12 **Enforcement authorities; violations; penalties.**

2 (a) In order to ensure the effective supervision and
3 enforcement of this chapter, the commissioner may, pursuant to
4 chapter 91:

5 (1) Deny, suspend, revoke, condition, or decline to renew
6 a license because of a violation of this chapter,
7 rules, an order, or a directive entered under this
8 chapter;

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

15 (3) Order restitution against persons subject to this
16 chapter for violations of this chapter;

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

18 (5) Issue orders or directives under this chapter as
19 follows:

20 (A) Order or direct persons subject to this chapter
21 to cease and desist from conducting business,



1 including immediate temporary orders to cease and
2 desist;

3 (B) Order or direct persons subject to this chapter
4 to cease any harmful activities or violations of
5 this chapter, including immediate temporary
6 orders to cease and desist;

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

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

16 (b) The commissioner may impose a civil penalty on a
17 mortgage loan originator or person subject to this chapter if
18 the commissioner finds on the record after notice and
19 opportunity for hearing that the mortgage loan originator or
20 person subject to this chapter has violated or failed to comply
21 with any requirement of this chapter or any rule prescribed by



1 the commissioner under this chapter or order issued under the
2 authority of this chapter.

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

5 (d) Each violation or failure to comply with any directive
6 or order of the commissioner shall be a separate and distinct
7 violation.

8 **§ -13 Surety bond; required.** (a) Each mortgage loan
9 originator shall be covered by a surety bond in accordance with
10 this section. In the event that the mortgage loan originator is
11 an employee or exclusive agent of a person subject to this
12 chapter, the surety bond of the person may be used in lieu of
13 the mortgage loan originator's surety bond.

14 (b) The surety bond shall provide coverage for each
15 mortgage loan originator in an amount prescribed in subsection
16 (c). The surety bond shall be in a form as prescribed by the
17 commissioner. The commissioner may adopt rules with respect to
18 the requirements for the surety bonds necessary to accomplish
19 the purposes of this chapter.

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



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

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

5 § -14 Confidentiality. (a) Except as otherwise
6 provided in Public Law 110-289, Section 1512, the requirements
7 under any federal law regarding the privacy or confidentiality
8 of any information or material provided to the Nationwide
9 Mortgage Licensing System, and any privilege arising under
10 federal or state law, including the rules of any federal or
11 state court, with respect to the information or material shall
12 continue to apply to the information or material after the
13 information or material has been disclosed to the Nationwide
14 Mortgage Licensing System. The information and material may be
15 shared with all state and federal regulatory officials with
16 mortgage industry oversight authority without the loss of
17 privilege or the loss of confidentiality protections provided by
18 federal or state law.

19 (b) For these purposes, the commissioner is authorized to
20 enter into agreements or sharing arrangements with other
21 governmental agencies, the Conference of State Bank Supervisors,
22 the American Association of Residential Mortgage Regulators, or



1 other associations representing governmental agencies as
2 established by rule or order of the commissioner.

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

5 (1) Disclosure under any federal or state law governing
6 the disclosure to the public of information held by an
7 officer or an agency of the federal government or a
8 state; or

9 (2) Subpoena or discovery, or admission into evidence, in
10 any private civil action or administrative process,
11 unless with respect to any privilege held by the
12 Nationwide Mortgage Licensing System applicable to the
13 information or material; provided that the person to
14 whom the information or material pertains waives, in
15 whole or in part, that privilege.

16 (d) Notwithstanding chapter 92F, the examination process
17 and related information and documents, including the reports of
18 examination, are confidential and are not subject to discovery
19 or disclosure in civil or criminal lawsuits.

20 (e) Notwithstanding any law to the contrary, the
21 disclosure of confidential supervisory information or any
22 information or material described in subsection (a) that is



1 inconsistent with subsection (c) shall be superseded by the
2 requirements of this section.

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

8 § -15 Investigation and examination authority. (a) In
9 addition to any other authority under this chapter, the
10 commissioner shall have the authority to conduct investigations
11 and examinations. The commissioner may access, receive, and use
12 any books, accounts, records, files, documents, information, or
13 evidence, including:

- 14 (1) Criminal, civil, and administrative history
15 information, including nonconviction data under
16 chapter 853;
- 17 (2) Personal history and experience information including
18 independent credit reports obtained from a consumer
19 reporting agency described in section 603(p) of the
20 Fair Credit Reporting Act; and
- 21 (3) Any other documents, information, or evidence the
22 commissioner deems relevant to the inquiry or



1 investigation, regardless of the location, possession,
2 control, or custody of the documents, information, or
3 evidence.

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

16 (c) Each licensed mortgage loan originator, individual, or
17 person subject to this chapter shall provide to the commissioner
18 upon request, the books and records relating to the operations
19 of the licensee, individual, or person subject to this chapter.
20 The commissioner shall have access to the books and records and
21 shall be permitted to interview the officers, principals,
22 mortgage loan originators, employees, independent contractors,



1 agents, and customers of the licensed mortgage loan originator,
2 individual, or person subject to this chapter concerning their
3 business.

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

8 (1) Accounting compilations;

9 (2) Information lists and data concerning loan
10 transactions in a format prescribed by the
11 commissioner; or

12 (3) Other information deemed necessary to carry out the
13 purposes of this section.

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

19 **§ -16 Mortgage call reports.** Each licensed mortgage
20 originator shall submit to the Nationwide Mortgage Licensing
21 System reports of condition, which shall be in such form and



1 contain such information as the Nationwide Mortgage Licensing
2 System may require.

3 **§ -17 Prohibited practices.** It shall be a violation of
4 this chapter for a mortgage loan originator to:

- 5 (1) Directly or indirectly employ any scheme, device, or
6 artifice to defraud or mislead borrowers or lenders or
7 to defraud any person;
- 8 (2) Engage in any unfair or deceptive practice toward any
9 person;
- 10 (3) Obtain property by fraud or misrepresentation;
- 11 (4) Solicit or enter into any contract with a borrower
12 that provides in substance that the person or
13 individual subject to this chapter may earn a fee of
14 commission through "best efforts" to obtain a loan
15 even though no loan is actually obtained for the
16 borrower;
- 17 (5) Solicit, advertise, or enter into a contract for
18 specific interest rates, points, or other financing
19 terms unless the terms are actually available at the
20 time of soliciting, advertising, or contracting;
- 21 (6) Conduct any business covered by this chapter without
22 holding a valid license as required under this



- 1 chapter, or assist or aid and abet any person in the
2 conduct of business under this chapter without a valid
3 license as required under this chapter;
- 4 (7) Fail to make disclosures as required by this chapter
5 and any other applicable state or federal law
6 including rules or regulations thereunder;
- 7 (8) Fail to comply with this chapter or rules adopted
8 under this chapter, or fail to comply with any other
9 state or federal law, including the rules and
10 regulations adopted thereunder, applicable to any
11 business authorized or conducted pursuant to this
12 chapter;
- 13 (9) Make, in an manner, any false or deceptive statement
14 or representation, including, with regard to the
15 rates, points, or other financing terms or conditions
16 for a residential mortgage loan, or engage in bait and
17 switch advertising;
- 18 (10) Negligently make any false statement or knowingly and
19 wilfully making any omission of material fact in
20 connection with any information or reports filed with
21 a governmental agency or the Nationwide Mortgage
22 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 advertising, 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 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 2. 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 3. 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 4. 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 5. 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[~~7~~] or broker[~~7~~, ~~or~~ ~~seller~~]; mortgage loan
4 originator; pawnbroker; mutual benefit society or fraternal
5 benefit society; debt adjuster; the issuer of a credit card as
6 defined in section 708-800; any person who initiates, extends,
7 renews, or continues loans of money or credit; any person who
8 regularly arranges for the initiation, extension, renewal, or
9 continuation of a loan of money or credit; or any assignee of an
10 original creditor who participates in the decision to grant,
11 extend, renew, or to continue [~~such~~] a loan of money or credit.\"

12 SECTION 6. 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 or the applicant's officers,
 5 directors, partners, members, managers, employees, or
 6 agents; and
 7 [~~+(28)+~~] (29) Any other organization, entity, or the State, its
 8 branches, political subdivisions, or agencies as may
 9 be authorized by state law."

10 SECTION 7. A mortgage broker or mortgage solicitor
 11 licensed under chapter 454, Hawaii Revised Statutes, as of
 12 July 1, 2009, shall not be required to be re-licensed as a
 13 mortgage loan originator under this Act until such later date
 14 approved by the Secretary of the United States Department of
 15 Housing and Urban Development, pursuant to the authority granted
 16 under Public Law 110-289, section 1508(d).

17 SECTION 8. There is appropriated out of the compliance
 18 resolution fund established under section 26-9(o), Hawaii
 19 Revised Statutes, the sum of \$ or so much thereof as
 20 may be necessary for fiscal year 2009-2010 to carry out the
 21 purposes of 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 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on July 1, 2090.



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. Effective July 1, 2090. (SB1218 HD1)

