



LATE TESTIMONY

Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

March 23, 2009

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
AND
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY ON SB 605, SD1, HD1

Chair Herkes, Chair Karamatsu and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of its farm families and organizations has concerns with SB605, SD1, HD1.

Although this bill has been proposed to address the public's concern about loud bass noise coming from bars and nightclubs, especially in downtown Honolulu, **the Hawaii Farm Bureau Federation is concerned about the inadvertent negative consequences to agriculture that may occur if this measure is passed.**

The application of a new (and apparently **not** widely used in other states) noise standard to agriculture may prohibit or severely limit farmers from conducting their necessary farming practices. We respectfully request that if this measure passes, it targets the problem it is meant to address without endangering Hawaii food production.

Thank you for this opportunity to provide testimony.

2LD

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANSMANN
MAYOR



BOISSE P. CORREA
CHIEF

LATE TESTIMONY

PAUL D. RITCHIE
JAMES W. WATSON
DEPUTY CHIEFS

OUR REFERENCE LK-TA

March 23, 2009

The Honorable Robert N. Herkes, Chair
and Members
Committee on Consumer Protection and Commerce
The Honorable Jon Riki Karamatsu, Chair
and Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Herkes and Karamatsu and Members:

Subject: Senate Bill No. 967, S.D. 2, H.D. 1, Relating to Controlled Substances

I am Louis Kealoha, captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 967, S.D. 2, H.D.1, Relating to Controlled Substances.

To ensure consistency in the regulation and enforcement of controlled substances, the Federal Controlled Substances Act is the basis for the classification of all controlled substances. It is the model upon which the Uniform Controlled Substances Act, chapter 329, Hawaii Revised Statutes, is based. Passage of this bill will ensure that chapter 329 is consistent with the Federal Controlled Substances Act.


The Honolulu Police Department urges you to support Senate Bill No. 967, S.D. 2, H.D.1, Relating to Controlled Substances.

Thank you for the opportunity to testify.

APPROVED:


BOISSE P. CORREA
Chief of Police

Sincerely,


LOUIS KEALOHA, Captain
Narcotics/Vice Division



March 22, 2009

Representative Robert N. Herkes
Chair, Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 320

LATE TESTIMONY

Representative Jon Riki Karamatsu
Chair, Committee on Judiciary
Hawaii State Capitol, Room 302

Re: S.B. 967, S.D.2, H.D.1 – Relating to Controlled Substances
Hearing on Monday, March 23, 2009 at 2:00 p.m., Room 325

Dear Chairs Herkes and Karamatsu and Members of the Joint Committees:

I am Mihoko Ito, an attorney with Goodwill Anderson Quinn & Stifel, testifying on behalf of Walgreen Co. ("Walgreens"). Walgreens operates more than 6,600 locations in 49 states the District of Columbia and Puerto Rico.

Walgreens **supports the intent of S.B. 967, S.D.2, H.D.1** because it makes Hawai'i's controlled substance laws consistent with federal law. Specifically, Section 5 of the measure will allow for the transfer of controlled substance prescriptions between pharmacies sharing a real-time, online database. This will allow for inter-island transfer of prescriptions, and enable improved pharmacy service for patients in Hawai'i.

Walgreens respectfully suggests that the Committee consider amendments to Section 6 of the bill, relating to the identification information required prior to the release of a prescribed controlled substance. Specifically, we would request that Section 6, subsection (6), be revised as follows:

- 1) to allow for the identification of an unknown individual to be documented either in a logbook or in an electronic database, using either an actual signature or electronic data capture device, prior to the pickup of a prescribed controlled substance; and
- 2) to allow for identification verification for mail order prescriptions to be handled through the initial registration process.

These amendments will allow a pharmacist or practitioner the discretion to use one of several methods to verify the identification of a patient, and also bring Hawai'i's legislation in line with that of other states.

We note that we are working with the Department of Public Safety, Narcotic Enforcement Division on agreeable language regarding the foregoing amendments, and hope to be able to provide this language as soon as possible.

Thank you very much for the opportunity to testify.

Walgreen Co. Government and Community Relations 104 Wilmot Road, MS 1444 Deerfield, IL 60015
847-315-4653 FAX 847-315-4417 www.walgreens.com

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, March 23, 2009
2:00 p.m.

LATE TESTIMONY

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1142, S.D. 1, RELATING TO PHYSICIAN ASSISTANTS.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to provide written testimony on S.B. No. 1142, S.D. 1, Relating to Physician Assistants. The purpose of this bill is to authorize physician assistants to sign certain documents; to provide emergency medical care without supervision; to administer immunizations; to prescribe medications for patients suffering from human immunodeficiency virus or acquired immune deficiency syndrome without preauthorization; and to limit liability of physician assistants under good Samaritan laws.

The Hawaii Medical Board ("Board") supports the intent of this bill.

Thank you for the opportunity to provide written comments on this bill.

Sharon Sagayadoro

From: Dorothy.W.Toni@kp.org
Sent: Monday, March 23, 2009 10:52 AM
To: CPCtestimony
Cc: Fielding.L.Mercer@kp.org
Subject: Support of SB 1142 SD1: Relating to Physician Assistants

LATE TESTIMONY

Rep. Robert N. Herkes, Chair, CPC
Rep. Jon Riki Karamatsu, Chair, JGO
RE: SB 1142 SD1
3/23/09

Support of SB 1142 SD1: Relating to Physician Assistants

I, Dorothy T. Maurice, support of SB 1142 SD1.

The bill assists supervising physicians extend care by including physician assistants (PAs) in the definition of health care provider, in certain instances, for the purpose of signing basic forms and certifications for the benefit of their patients. Physician assistants were not intentionally excluded from these definitions, but rather, these were unintentional omissions. All items addressed within the bill are within the current scope of practice for physician assistants licensed in Hawaii and practicing under the supervision of physicians. There are no controversial issues within the bill, but rather, it is a housekeeping issue to properly address the definitions of health care provider in the State of Hawaii.

The bill includes PAs as providers under the Good Samaritan Law and in the definition of those who may provide care in disasters. The earthquake on the island of Hawaii illustrated the importance of allowing all qualified providers to deliver care in emergency or disaster situations. In some rural areas of the Big Island, PAs may be the only providers available to provide care in such situation.

Passage of this bill will allow patients better access to health care in medically underserved areas, be it geographically or by medical specialty and allow physicians to better serve their patients.

I ask your support in passing SB 1142 SD1. Thank you for this opportunity to testify.

Dorothy Toni Maurice, PA-C, MsCMS
Physician Assistant, NCCPA Board Certified
The Aesthetic Center, Kaiser Permanente New Ventures
Cosmetic Dermatology
Honolulu and Hawaii Kai clinics
Wk: 808.432.2810 Fax: 808.432.2616
Email: Dorothy.w.toni@kp.org

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

March 23, 2009

S.B. No. 1263, S.D. 2, H.D 1: RELATING TO TATTOO ARTISTS

Chair Karamatsu and Members of the Committee:

The Office of the Public Defender takes no position on the policy questions raised by the proposed regulatory changes offered in this legislation. However, we see a number of serious problems with the proposed criminal offense created in this bill.

This bill would make it a “violation” to be arrested or convicted “for any violation for substance abuse or trafficking of illegal substances”. (Ref: p. 6, line 20 and p. 7, lines 5-7). In our penal code, there is no such crime as “substance abuse”, therefore, no one could be arrested for violation of it. Under Chapter 712, persons can be arrested for possession of illegal substances and trafficking of specified illegal substances and, under Chapter 329, persons can be arrested for possession of drug paraphernalia.

In addition to the problem that the language in the proposed S.D. 2, H.D. 1 references an offense that doesn’t exist, we object to anyone being held to have “violated” this newly created law on the mere basis that the person was arrested for a crime. An arrest is not the same thing as a conviction and should not be treated the same. Indeed, innocent persons are arrested for crimes they did not commit. There would be constitutional implications if an arrest were to be treated equally to a conviction.

We also object to the newly created misdemeanor offense which is so vaguely defined that it probably wouldn’t pass constitutional muster. (Ref: p. 9, lines 16-20). The new language seeks to make a person guilty of a misdemeanor if the person “knowingly or willfully makes a false statement to the department relating to any requirement of this part”. First, it is not clear what “this part” refers to. Secondly, it would appear that if a person did not report an arrest (as described above), the person would be guilty of a misdemeanor, even if the person was ultimately acquitted of the underlying criminal charge. Such a result does not make sense.

Finally, the proposed fine for the misdemeanor offense is out of whack with the structure of our penal code. HRS § 706-640 establishes the fines for the gradation of offenses found in our penal code; subsection (d) sets the maximum fine for a misdemeanor offense at \$2000. It is poor policy to create a different fine for this newly created offense when offenses such as Assault in the Third Degree, Terroristic Threatening in the Second Degree, i.e. offenses that involve actual harm or threatened harm to a person, are capped at \$2000. fines.

Based upon the concerns noted above, we oppose passage of this bill in its current form. Thank for the opportunity to comment on this measure.



LATE TESTIMONY

Monday, March 23, 2009, 2:00 PM, CR 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, President
Philip Hellreich, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Richard C. Botti, Government Affairs
Lauren Zirbel, Government Affairs

Re: SB 1676 RELATING TO HEALTH (Telemedicine)

Chairs & Committee Members:

While Hawaii Medical Association favors the concept of telemedicine, we oppose this bill as it is currently written.

One major concern we have with the wording of this bill is that it allows for the establishment of a physician-patient relationship without the physician actually seeing the patient. Once a physician-patient relationship has been established with a person-to-person visit, the physician will have records of the patient, creating a history of the patient. Only then should telemedicine be acceptable.

What we do not want to see is a physician creating a practice of virtual patients that are never seen in person, and could actually be a forgery. Additionally there is concern that online consultation opens physicians to an additional liability by allowing them to make decisions about a patient's health without actually examining the patient. The solution is that online consultations should only occur after a physician-patient relationship has been previously established. The only exception to this requirement would be when a primary care physician needs immediate help from a specialist, and no specialist is available in that geographic location.

Another major concern with this bill is that it allows a physician licensed in this state to provide telemedicine services to Hawaii patients, because many physicians with Hawaii licenses do not actually practice in Hawaii. This opens the doors to the internet practice of medicine with no follow up by the physician if the patient needs to receive continued care. Hawaii physicians will take the brunt of mistakes and have difficulty obtaining records. There is also very little recourse against the physician if the patient is harmed. Technically, the state of Hawaii has jurisdiction, but there is tremendous cost and difficulty of investigating a case when the physician is not in Hawaii.

We believe telemedicine will help form the future of medicine. But it is also vulnerable to major pitfalls. Thus, we strongly recommend that if this measure is passed it be amended to specifically require that telemedicine only be allowed after the traditional physician-patient relationship has been established, and allowed only by physicians who practice in Hawaii.

Thank you for the opportunity to provide this testimony.

OFFICERS

Gary Okamoto, MD
President

Robert Marvit, MD
President Elect

Cynthia Jean Goto, MD
Immediate Past President

Thomas Kosasa, MD
Secretary

Jonathan Cho, MD
Treasurer

April Donahue
Executive Director

Hawaii Medical Association
1360 S. Beretania St.
Suite 200
Honolulu, HI 96814
(808) 536-7702
(808) 528-2376 fax
www.hmaonline.net



Attorneys at Law • A Law Corporation

LATE TESTIMONY

March 23, 2009

The Honorable Robert N. Herkes, Chair
The Honorable Jon Riki Karamatsu, Chair
House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 1676 SD2 – Relating to Health
Hearing Date/Time: March 23, 2009 at 2:00 pm

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

Dianne Winter Brookins
Phone: (808) 441-6124
Fax: (808) 524-4591
E-mail: DBrookins@ahfi.com

My name is Dianne Winter Brookins. I am a director and shareholder in the Honolulu law firm of Alston Hunt Floyd & Ing, and counsel for Hawaii Medical Service Association ("HMSA"). Thank you for the opportunity to testify in favor of SB1676 SD2, which clarifies and expands current Hawaii law regarding telemedicine.

Under current Hawaii law, residents of Hawaii who are under the care of a physician licensed by the State of Hawaii can receive care from a physician licensed in another state through a telemedicine consultation, as long as the treating Hawaii physician participates in the consultation and the remaining requirements of Hawaii Revised Statutes ("HRS") § 453-2(b)(3) are met.

The current language of SB1676 SD2, in sub-section (f), expands upon HRS § 453-2(b)(3) by allowing the Hawaii patient to continue to consult via telemedicine with the physician licensed in another state without the active participation of the patient's treating Hawaii physician, once a physician-patient relationship is established with the Hawaii physician.

American Savings Bank Tower
18th Floor
1001 Bishop Street
Honolulu, Hawaii 96813
Phone: (808) 524-1800
Fax: (808) 524-4591

Carter Professional Center
Suite C21
65-1230 Mamalaha Highway
Kamuela, Hawaii 96743
Phone: (808) 885-6762
Fax: (808) 885-6011


One Main Plaza
Suite 521
2200 Main Street
Wailuku, Hawaii 96793
Phone: (808) 244-1160
Fax: (808) 442-0794

www.ahfi.com

I am not aware of any state which allows a physician to regularly engage in telemedicine without obtaining some form of license in the state where the patient resides, unless the out of state physician is consulting with the patient's treating physician who is licensed in that state.

Thank you for your consideration of this testimony.

Sincerely,


Dianne Winter Brookins

DWB:bh



Information Alert

National Conference of State Legislatures
Office of State-Federal Relations

October 22, 2008

S.A.F.E. Mortgage Licensing Act

State Legislators must adopt State-licensing system for loan originators within the next year

On July 30th, 2008, the President signed the Housing and Economic Recovery Act of 2008 (H.R. 3221) into law to stabilize the housing market and help alleviate the financial crisis. Title V of the Act, the Secure and Fair Enforcement (S.A.F.E.) for Mortgage Licensing Act of 2008, affirms that any residential mortgage loan originator must be either State-licensed by August 1, 2009, or federally registered. These loan originators must also register with the Nationwide Mortgage Licensing System and Registry to increase uniformity and reduce fraud. The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) are currently developing model legislation that incorporate the necessary requirements for State implementation of the S.A.F.E. Mortgage Licensing Act.

What States must do:

The S.A.F.E. Mortgage Licensing Act requires all States to adopt a system of licensing for all residential loan originators. States that want to maintain originator supervisory authority must meet the following minimum requirements:

- Provide effective supervision and enforcement of such law, including suspension, termination or nonrenewal of a license for a violation of State or Federal law.
- Ensure all State-licensed loan originators operating in the State are registered with the Nationwide Mortgage Licensing System and Registry.
- Regularly report violations of such law, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.
- Have due process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.
- Establish a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.
- Establish minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or establish
- a recovery fund paid into by the loan originators.

To be licensed within a State, loan originators must not have any felonies over the past seven years, never had a felony involving fraud or dishonesty, never had a loan originator license revoked, must demonstrate financial responsibility and general fitness, score 75% or better on a national test created by the Nationwide Mortgage Licensing System and Registry and take eight hours of continuing education annually. The model legislation being developed by CSBS and AARMR includes all requirements listed above.

States have until August 1, 2009, to successfully meet these standards as defined in H.R. 3221. Any State legislature that meets biennially will have two years to enact State license legislation, while the Department of Housing and Urban Development (HUD) may also grant a two-year extension for States making a good faith effort for incorporating a system of licensing. If, however, a State does not meet the threshold by the allotted deadline, HUD will create a backup licensing system to coordinate licensing and registration for loan originators for that State.

If you have questions regarding our concerns, please contact Jeff Hurley at 202-624-7753 / jeff.hurley@ncsl.org or Neal Osten at 202-624-8660 / neal.osten@ncsl.org.

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 ~~[MORTGAGE BROKERS AND LOAN ORIGINATORS]~~

6 SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

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

9 "Advertisement" or "advertising" means:

- 10 (1) Issuing any card, sign, or device to any person;
- 11 (2) Causing, permitting, or allowing the placement of any
12 sign or marking on or in any building, vehicle, or
13 structure;
- 14 (3) Placing an advertisement in any newspaper, magazine,
15 or on the Internet;
- 16 (4) Listing or advertising in any directory under a
17 classification or heading that includes the words
18 "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 U.S.C. section 1813(c)(2); provided that it also includes any



1 credit union whose deposits are insured by the National Credit
2 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 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 enforcement
3 of this chapter, the commissioner may, pursuant to chapter 91:

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

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

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

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

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

19 (A) Order or direct persons subject to this chapter
20 to cease and desist from conducting business,
21 including immediate temporary orders to cease and
22 desist;



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

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

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

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



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

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

6 **§ -13 Surety bond; required.** (a) Each mortgage loan
7 originator shall be covered by a surety bond in accordance with
8 this section. In the event that the mortgage loan originator is
9 an employee or exclusive agent of a person subject to this
10 chapter, the surety bond of the person may be used in lieu of
11 the mortgage loan originator's surety bond.

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

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

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

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

3 § -14 Confidentiality. (a) Except as otherwise
4 provided in Public Law 110-289, section 1512, the requirements
5 under any federal law regarding the privacy or confidentiality
6 of any information or material provided to the Nationwide
7 Mortgage Licensing System, and any privilege arising under
8 federal or state law, including the rules of any federal or
9 state court, with respect to the information or material shall
10 continue to apply to the information or material after the
11 information or material has been disclosed to the Nationwide
12 Mortgage Licensing System. The information and material may be
13 shared with all state and federal regulatory officials with
14 mortgage industry oversight authority without the loss of
15 privilege or the loss of confidentiality protections provided by
16 federal or state law.

17 (b) For these purposes, the commissioner is authorized to
18 enter into agreements or sharing arrangements with other
19 governmental agencies, the Conference of State Bank Supervisors,
20 the American Association of Residential Mortgage Regulators, or
21 other associations representing governmental agencies as
22 established by rule or order of the commissioner.



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

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

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

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

18 (e) Notwithstanding any law to the contrary, the
19 disclosure of confidential supervisory information or any
20 information or material described in subsection (a) that is
21 inconsistent with subsection (c) shall be superseded by the
22 requirements of this section.



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

6 § -15 **Investigation and examination authority.** (a) In
7 addition to any other authority under this chapter, the
8 commissioner shall have the authority to conduct investigations
9 and examinations. The commissioner may access, receive, and use
10 any books, accounts, records, files, documents, information, or
11 evidence including but not limited to:

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



1 control, or custody of the documents, information, or
2 evidence.

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

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



1 individual, or person subject to this chapter concerning their
2 business.

3 (d) Each licensed mortgage loan originator, individual, or
4 person subject to this chapter shall make or compile reports or
5 prepare other information as directed by the commissioner in
6 order to carry out the purposes of this section including but
7 not limited to:

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 [~~owner,~~] 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
14 deems necessary for the administration of this
15 chapter.

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

- 18 (1) Administer and enforce the provisions and requirements
19 of this chapter;
- 20 (2) Adopt, amend, or repeal rules and issue declaratory
21 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 \$, or an amount as the commissioner
8 shall 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 \$ or an amount as the commissioner shall establish by
12 rule 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 \$, or an amount as the
16 commissioner 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, a 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. [L 1967, c 228, §3;
20 HRS §454-2; am L 1983, c 39, §2; am L 1989, c
21 218, §4 and c 266, §3; gen ch 1992; am L 1999, c
22 43, §2; am L 2005, c 83, §1; am L 2007, c 18, §1]



1 (8) An individual licensed as a mortgage loan originator
2 under chapter ."

3 SECTION 3

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

6 "(e) All fees shall be established and adopted by the
7 director in accordance with chapter 91 and shall be deposited
8 into the compliance resolution fund established pursuant to
9 section 26-9(o) [-]; provided that, in order to establish
10 regulatory practices for residential mortgage lending, a
11 surcharge of \$400 shall be charged to every mortgage broker that
12 shall be due on December 31, 2009 and a surcharge of \$100 shall
13 be charged to every mortgage solicitor that shall be due on
14 December 31, 2009. Failure of any mortgage broker or mortgage
15 solicitor to pay the biennial renewal fee on or before
16 December 31 of an even-numbered year or the surcharge shall
17 constitute an automatic forfeiture of the license. The
18 forfeited license may be restored; provided that application for
19 restoration is made within six months of the forfeiture and a
20 penalty fee is paid in addition to the delinquent license fee or
21 surcharge. A licensee who fails to restore a license as
22 provided in this subsection shall apply as a new applicant."



1 SECTION 4. Section 477E-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "creditor" to read as
3 follows:

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

15 SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

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

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

21 (2) The department of health on prospective employees,
22 persons seeking to serve as providers, or



1 subcontractors in positions that place them in direct
2 contact with clients when providing non-witnessed
3 direct mental health services as provided by section
4 321-171.5;

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

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



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



- 1 (11) The department of human services on operators and
2 employees of home and community-based case management
3 agencies and operators and other adults, except for
4 adults in care, residing in foster family homes as
5 provided by section 346-335;
- 6 (12) The department of human services on staff members of
7 the Hawaii youth correctional facility as provided by
8 section 352-5.5;
- 9 (13) The department of human services on employees,
10 prospective employees, and volunteers of contracted
11 providers and subcontractors in positions that place
12 them in close proximity to youth when providing
13 services on behalf of the office or the Hawaii youth
14 correctional facility as provided by section 352D-4.3;
- 15 (14) The judiciary on employees and applicants at detention
16 and shelter facilities as provided by section 571-34;
- 17 (15) The department of public safety on employees and
18 prospective employees who are directly involved with
19 the treatment and care of persons committed to a
20 correctional facility or who possess police powers
21 including the power of arrest as provided by section
22 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 the
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 8. Chapter 454, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 9. A mortgage broker or mortgage solicitor
13 licensed under chapter 454, Hawaii Revised Statutes, as of
14 July 1, 2009 shall not be required to be re-licensed as a
15 mortgage loan originator under this Act until such later date
16 approved by the Secretary of the United States Department of
17 Housing and Urban Development, pursuant to the authority granted
18 under Public Law 110-289, section 1508(d).

19 SECTION 10. There is appropriated out of the compliance
20 resolution fund established under section 26-9(o), Hawaii
21 Revised Statutes, the sum of \$ _____ or so much thereof as



1 may be necessary for fiscal year 2009-2010 to carry out the
2 purposes of this Act.

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

5 SECTION 11. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 12. This Act shall take effect on July 1, 2090.

8
9



SECTION 1. Section 1, Hawaii Revised Statutes, is amended to read as follows:

"Report Title:

Mortgage Brokers; Mortgage Loan Originator

Description:

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage brokers and loan originators. Repeals chapter 454, HRS, relating to mortgage brokers and solicitors. (SD2)

