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# A BILL FOR AN ACT

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE  
LICENSING ACT.

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

1           SECTION 1. The purpose of this Act is to allow the State  
2 to continue to work toward meeting its obligations under the  
3 federal Secure and Fair Enforcement for Mortgage Licensing Act  
4 of 2008 (S.A.F.E. Mortgage Licensing Act). The S.A.F.E.  
5 Mortgage Licensing Act requires states to have a clear system of  
6 regulation that complies with the federal law in place to  
7 regulate the residential mortgage industry or face federal  
8 takeover of the intrastate residential real estate industry.  
9 The legislature finds that it is in the best interest of the  
10 State that licensing and regulation of the domestic mortgage  
11 industry remain with the State and in compliance with federal  
12 law. The legislature began the process of compliance with the  
13 federal law by creating chapter 454F, Hawaii Revised Statutes,  
14 through the passage of Act 32 in the First Special Session of  
15 2009 (Act 32). The legislature finds that Act 32 was a  
16 necessary step in meeting the mandates of the S.A.F.E. Mortgage



1 Licensing Act, but that the current measure is also necessary to  
2 refine the regulatory system created by Act 32.

3 The legislature further finds that the fees and  
4 appropriations from the compliance resolution fund contained in  
5 this Act are adequate to fully fund the regulatory system  
6 contained in chapter 454F, Hawaii Revised Statutes. The  
7 legislature also finds that the mortgage recovery fund will  
8 protect the state's consumers by making it easier to recover  
9 losses caused by individuals or companies that violate the law  
10 governing fair mortgage lending practices.

11 Finally, the legislature finds that this Act and Act 32  
12 contain appropriate provisions to effectuate a smooth transfer  
13 of the regulatory regime governing mortgage professionals from  
14 the system created by chapter 454, Hawaii Revised Statutes, to  
15 the new system created by chapter 454F, Hawaii Revised Statutes.  
16 The legislature particularly notes that this Act both authorizes  
17 the commissioner of financial institutions to hire temporary  
18 employees to overcome the initial administrative hurdle of  
19 processing a large number of licensing applications and  
20 statutorily creates permanent positions in the division of  
21 financial institutions of the department of commerce and



1 consumer affairs to carry out the continuing requirements of  
2 this Act.

3 SECTION 2. Chapter 412, Hawaii Revised Statutes, is  
4 amended by adding a new section to part V of article 9 to be  
5 appropriately designated and to read as follows:

6 "§412:9- Registration of nondepository financial  
7 services loan companies with Nationwide Mortgage Licensing  
8 System. (a) A nondepository financial services loan company  
9 licensed under this chapter is not a mortgage loan originator  
10 company as defined in section 454F-1.

11 (b) A nondepository financial services loan company shall  
12 register with the Nationwide Mortgage Licensing System if any  
13 employee of the nondepository financial services loan company  
14 acts as a mortgage loan originator as defined in section 454F-1  
15 or if the nondepository financial services loan company uses the  
16 services of an exclusive independent contractor mortgage loan  
17 originator, or loan processor or underwriter, as defined in  
18 chapter 454F.

19 (c) This section does not exempt an employee of a  
20 nondepository financial services loan company who originates  
21 mortgage loans, or an independent contractor providing mortgage  
22 loan originating, processing, or underwriting services to a



1 nondepository financial services loan company, from licensure  
2 under chapter 454F."

3 SECTION 3. Chapter 454F, Hawaii Revised Statutes, is  
4 amended by adding sixteen new sections to be appropriately  
5 designated and to read as follows:

6 "§454F-A Registration with Nationwide Mortgage Licensing  
7 System required. (a) All mortgage loan originators, mortgage  
8 loan originator companies, and any other person in this state  
9 that originate a residential mortgage loan, unless exempt under  
10 section 454F-2, shall register with the Nationwide Mortgage  
11 Licensing System.

12 (b) Exempt registered mortgage loan originators and exempt  
13 mortgage loan originator companies, unless exempt under section  
14 454F-2, shall register and maintain a unique identifier through  
15 the Nationwide Mortgage Licensing System, but shall not be  
16 required to be licensed under this chapter.

17 §454F-B Automatic secondary review of license application.  
18 The commissioner shall establish, by rule pursuant to chapter  
19 91, a procedure for the secondary review of each application  
20 that was determined on initial review to fail to meet the  
21 criteria for licensure.



1        §454F-C Mortgage loan recovery fund; use of fund; fees.

2        (a) The commissioner shall establish and maintain a fund that  
3        shall be known as the mortgage loan recovery fund from which any  
4        person aggrieved by an act, representation, transaction, or  
5        conduct of a licensee involving fraud, misrepresentation, or  
6        deceit may recover by order of the circuit court or district  
7        court of the county where the violation occurred, an amount of  
8        not more than \$25,000 per transaction, including court costs and  
9        fees as set by law and reasonable attorney fees as determined by  
10       the court, for damages sustained by the fraud,  
11       misrepresentation, or deceit of a licensee.

12       (b) In addition to application fees and any fees required  
13       by the Nationwide Mortgage Licensing System, a licensee shall  
14       pay to the division a mortgage loan recovery fund fee as follows  
15       for deposit in the mortgage loan recovery fund:

16       (1) The sum of \$300 for each principal office location of  
17       a mortgage loan originator company;

18       (2) The sum of \$250 for each branch office location of a  
19       mortgage loan originator company; and

20       (3) The sum of \$200 for each mortgage loan originator.

21       (c) Upon application for renewal of a license under this  
22       chapter, a licensee shall pay, in addition to the licensee's



1 license renewal fee and fees required by the Nationwide Mortgage  
2 Licensing System, a mortgage loan recovery fund fee as follows  
3 for deposit in the mortgage loan recovery fund:

4 (1) The sum of \$200 for each principal office location of  
5 a mortgage loan originator company;

6 (2) The sum of \$150 for each branch office location of a  
7 mortgage loan originator company; and

8 (3) The sum of \$100 for each mortgage loan originator.

9 Mortgage loan recovery fees collected pursuant to this  
10 subsection shall be refundable upon the denial of a license  
11 renewal by the commissioner.

12 (d) When the mortgage loan recovery fund attains a funding  
13 level of \$750,000, the commissioner may, by rule adopted  
14 pursuant to chapter 91, adjust the fees generated by renewals or  
15 may determine that payments made by renewing licensees shall  
16 cease. If the funding level falls below \$250,000 after the  
17 first five years of the establishment of the fund, the  
18 commissioner may adjust the fees to a reasonable level for the  
19 purpose of attaining a funding level of \$750,000.

20 (e) The commissioner or the commissioner's designee, as  
21 the manager of the mortgage loan recovery fund, shall be



1 authorized to expend moneys in the mortgage loan recovery fund  
2 to:

- 3 (1) Retain private legal counsel to represent the  
4 commissioner or the division in any action that  
5 involves or may result in payment from the mortgage  
6 loan recovery fund;
- 7 (2) Retain a certified public accountant for accounting  
8 and auditing of the mortgage loan recovery fund;
- 9 (3) Employ necessary personnel, not subject to chapter 76,  
10 to assist the commissioner in exercising the  
11 commissioner's powers and duties with respect to the  
12 mortgage loan recovery fund; and
- 13 (4) Retain a consultant to recover and collect any  
14 payments from the mortgage loan recovery fund plus  
15 interest from the judgment debtor.

16 §454F-D Statute of limitation; recovery from fund. (a)  
17 No action for a judgment that subsequently results in an order  
18 for collection from the mortgage loan recovery fund shall be  
19 commenced later than six years from the accrual of the cause of  
20 action. When any aggrieved person commences an action for a  
21 judgment that may result in collection from the mortgage loan  
22 recovery fund, the aggrieved person shall notify the



1 commissioner in writing at the time of the commencement of the  
2 action and shall submit to the commissioner any documents  
3 required by the commissioner pursuant to rules issued in  
4 accordance with chapter 91.

5 (b) When any aggrieved person receives a valid judgment  
6 upon the grounds of fraud, misrepresentation, or deceit that  
7 occurred before the effective date of section 454F-C against any  
8 licensee from any circuit or district court where the violation  
9 occurred, the aggrieved person shall proceed against the bond  
10 covering the license that was in force prior to the enactment of  
11 section 454F-C and establishment of the mortgage loan recovery  
12 fund.

13 (c) The court shall proceed upon an application to recover  
14 from the mortgage loan recovery fund in a summary manner and, at  
15 hearing, the aggrieved person shall be required to show:

16 (1) The person is not a spouse of the judgment debtor or  
17 the personal representative of a spouse of the  
18 judgment debtor;

19 (2) The person has complied with all the requirements of  
20 this section;

21 (3) The person has obtained a judgment or settlement  
22 pursuant to section 454F-C(a) that states the amount





1 of the judgment and the amount owed on the judgment  
2 debt as of the date of the application;

3 (4) The person has made all reasonable searches and  
4 inquiries to ascertain whether the judgment debtor is  
5 possessed of real or personal property or other assets  
6 liable to be sold or applied in satisfaction of the  
7 judgment; and

8 (A) The search has uncovered no personal or real  
9 property or other assets liable to be sold or  
10 applied; or

11 (B) The search has uncovered personal or real  
12 property or other assets liable to be sold or  
13 applied, the person has taken all necessary  
14 action and completed all necessary proceedings  
15 for the realization thereof, and the amount  
16 realized was insufficient to satisfy the  
17 judgment; provided that the person shall state  
18 the amount realized and the balance remaining due  
19 on the judgment after application of the amount  
20 realized; and

21 (5) That where the licensee is a judgment debtor in a  
22 bankruptcy proceeding, the aggrieved person has



1           obtained an order from the bankruptcy court declaring  
2           the judgment against the licensee to be non-  
3           dischargeable.

4           (d) Upon hearing, if the court is satisfied of the truth  
5           of all matters required by subsection (c) and that the aggrieved  
6           person has fully pursued and exhausted all remedies available to  
7           the person for recovering the amount awarded by the judgment of  
8           the court, the court shall issue an order directing the  
9           commissioner to pay from the mortgage loan recovery fund  
10           whatever sum the court finds to be payable upon the claim in  
11           accordance with the limitations contained in this section.

12           (e) Notwithstanding any other provision, the liability of  
13           the mortgage loan recovery fund shall not exceed the sum of  
14           \$100,000 against any one licensee.

15           §454F-E Management of fund. (a) The sums received by the  
16           division pursuant to section 454F-C for deposit into the  
17           mortgage loan recovery fund shall be held by the commissioner or  
18           the commissioner's designee to carry out the purpose of the  
19           mortgage loan recovery fund. These funds may be invested and  
20           reinvested in the same manner as funds of the state employees'  
21           retirement system.



1        (b) The commissioner or the commissioner's designee, as  
2 the manager of the mortgage loan recovery fund, shall be  
3 authorized to expend moneys from the fund to retain private  
4 legal counsel to represent the commissioner in any action  
5 involving the mortgage loan recovery fund.

6        §454F-F Standing. The commissioner shall have standing to  
7 intervene in and defend any action to recover from the mortgage  
8 loan recovery fund, including by entering an appearance, filing  
9 an answer, appearing at court hearings, and taking any recourse  
10 through appropriate methods of review. The commissioner or the  
11 commissioner's legal representative shall be served with all  
12 pleadings in any action pursuant to this section.

13        §454F-G Subrogation of rights. When, pursuant to court  
14 order, the commissioner has paid any sum to a judgment creditor  
15 from the mortgage loan recovery fund, the commissioner shall be  
16 subrogated to all of the rights of the judgment creditor. The  
17 judgment creditor shall assign all of the judgment creditor's  
18 rights, title, and interest in the judgment to the commissioner.  
19 Any interest collected by the commissioner pursuant to this  
20 section shall be deposited into the mortgage loan recovery fund.



1       §454F-H Waiver of rights. The failure of an aggrieved  
2 person to comply with sections 454F-C and 454F-D shall  
3 constitute a waiver of the rights contained in those sections.

4       §454F-I Disciplinary action against licensee. No  
5 provision of this chapter relating to the mortgage loan recovery  
6 fund shall limit the authority of the commissioner to take  
7 disciplinary action against any licensee for a violation of this  
8 chapter or of the rules and orders of the commissioner adopted  
9 pursuant to this chapter. Repayment of obligations to the  
10 mortgage loan recovery fund by a licensee shall not nullify or  
11 modify the effect of any other disciplinary proceeding brought  
12 pursuant to this chapter.

13       §454F-J Authorized places of business; designation of  
14 managers; branch offices. (a) Every mortgage loan originator  
15 company licensed under this chapter shall have and maintain a  
16 principal place of business in the state and shall designate a  
17 manager.

18       (b) A mortgage loan originator company shall not maintain  
19 any branch offices in the state in addition to its principal  
20 place of business without the prior written approval of the  
21 commissioner. An application to establish a branch office shall  
22 be submitted with an application fee as required by section



1 454F-N. A mortgage loan originator company that established a  
2 branch office pursuant to this subsection shall designate a  
3 manager located at each branch office to oversee that branch  
4 office.

5 (c) A mortgage loan originator company shall not relocate  
6 any office in this state without the prior written approval of  
7 the commissioner. An application to relocate an office shall  
8 set forth the reasons for the relocation, the street address of  
9 the proposed relocated office, and other information that may be  
10 required by the commissioner. An application to relocate an  
11 office pursuant to this subsection shall be submitted with a fee  
12 as required by section 454F-N.

13 (d) A mortgage loan originator company shall give the  
14 commissioner notice of its intent to close a branch office at  
15 least thirty days prior to the closing. The notice shall:

16 (1) State the intended date of closing; and

17 (2) Specify the reasons for the closing.

18 §454F-K Reinstatement of expired licenses. (a) A license  
19 issued pursuant to this chapter that expires due to failure to  
20 satisfy the minimum standards for renewal may be reinstated if  
21 the licensee meets the following requirements:



1       (1) The licensee applies for reinstatement between January  
2       1 and February 28 of the year immediately following  
3       the year in which the license expired;

4       (2) All continuing education courses required for license  
5       renewal for the year in which the license expired  
6       shall be completed between January 1 and February 28  
7       of the year immediately following the year in which  
8       the license expired; provided that continuing  
9       education courses that satisfy the previous year's  
10       requirement shall not also be credited toward  
11       satisfying the current year's continuing education  
12       requirements; and

13       (3) The licensee shall pay all applicable licensing,  
14       reinstatement, and late fees assessed by the  
15       commissioner.

16       (b) A licensee that fails to meet the requirements for  
17       renewal of an expired license established by this section may  
18       apply for a new license and shall meet the requirements for new  
19       licenses in effect at the time of application.

20       §454F-L Presumption of control. An individual is presumed  
21       to control a mortgage loan originator company if that individual



1 is a director, general partner, managing director, or executive  
2 officer of that mortgage loan originator company.

3 §454F-M Payment of fees. All fees collected pursuant to  
4 section 454F-N, administrative fines, and other charges  
5 collected pursuant to this chapter, except fees designated for  
6 deposit into the mortgage loan recovery fund shall be deposited  
7 into the compliance resolution fund established pursuant to  
8 section 26-9(o) and shall be payable through the Nationwide  
9 Mortgage Licensing System, to the extent allowed by the  
10 Nationwide Mortgage Licensing System. Fees not eligible for  
11 payment through the Nationwide Mortgage Licensing System shall  
12 be deposited into a separate account within the compliance  
13 resolution fund for use by the division.

14 §454F-N Mortgage loan originator and mortgage loan  
15 originator company fees. (a) A mortgage loan originator shall  
16 pay the following fees to obtain and maintain a valid mortgage  
17 loan originator license:

- 18 (1) Initial application fee of \$ \_\_\_\_\_ ;  
19 (2) Annual license renewal fee of \$ \_\_\_\_\_ ;  
20 (3) Reinstatement fee of \$ \_\_\_\_\_ ;  
21 (4) Late fee of \$ \_\_\_\_\_ per day; and



1       (5) Criminal background check fee of \$ \_\_\_\_\_, or of an  
2       amount determined by the commissioner by rule pursuant  
3       to chapter 91.

4       (b) A mortgage loan originator company shall pay the  
5       following fees to maintain a valid mortgage loan originator  
6       company license or branch license:

7       (1) Fees payable for a principal office of a mortgage loan  
8       originator company:

9       (A) Initial application fee of \$ \_\_\_\_\_ ;

10       (B) Annual license renewal fee of \$ \_\_\_\_\_ ;

11       (C) Reinstatement fee of \$ \_\_\_\_\_ ;

12       (D) Late fee of \$ \_\_\_\_\_ per day; and

13       (E) Criminal background check fee of \$ \_\_\_\_\_, or of an  
14       amount determined by the commissioner by rule  
15       pursuant to chapter 91, for each control person,  
16       executive officer, director, general partner, and  
17       manager; and

18       (2) Fees payable for each branch office of a mortgage loan  
19       originator company:

20       (A) Initial application fee of \$ \_\_\_\_\_ ;

21       (B) Annual license renewal fee of \$ \_\_\_\_\_ ;

22       (C) Reinstatement fee of \$ \_\_\_\_\_ ; and





1           (D) Late fee of \$           per day.

2           (c) In addition to fees charged by the Nationwide Mortgage  
3 Licensing System, a licensee shall pay to the commissioner a fee  
4 of \$           for each of the following amendments to information  
5 provided to the Nationwide Mortgage Licensing System that  
6 require the review of the commissioner:

7           (1) Change of physical location, including address change  
8           for branch or principal place of business;

9           (2) Addition or deletion of a "d/b/a" assignment;

10          (3) Change of manager; or

11          (4) Change of legal name.

12 The commissioner, upon a showing of good cause, may waive any  
13 fee set forth in this subsection.

14          (d) The fees established by this section are nonrefundable  
15 and are in addition to any fees established and charged by the  
16 Nationwide Mortgage Licensing System, an approved educational  
17 course provider, an approved educational testing provider, a law  
18 enforcement agency for fingerprints and background checks, or a  
19 credit reporting agency used by the Nationwide Mortgage  
20 Licensing System.



1       (e) The commissioner may establish, by rule pursuant to  
2 chapter 91, any other fees or charges necessary for the  
3 administration of this chapter.

4       §454F-0 Voluntary cessation of operation; surrender of

5 license. (a) Subject to the approval of the commissioner, a  
6 licensee may voluntarily cease activity for which a license to  
7 operate has been issued under this chapter by delivering to the  
8 commissioner a written notice of surrender, which shall include  
9 but not be limited to:

10       (1) A plan of cessation of business;

11       (2) Provisions for the transfer or assumption of assets;

12       (3) Provisions for pending applications or transactions;

13       (4) Provisions for payment or assumption of liabilities;

14       (5) Provisions for the disposition of individual mortgage  
15 loan originator licenses, and

16       (6) Provisions for transfer or assumption of all trust,  
17 agency, and other fiduciary relationships and  
18 accounts.

19       (b) The commissioner shall approve the surrender if:

20       (1) The commissioner is satisfied with the plan as set  
21 forth by the licensee; and



1       (2) No other reason exists to deny the request for  
2           surrender;  
3 provided that the commissioner may impose any restrictions and  
4 conditions as the commissioner deems appropriate.

5       (c) The surrender shall not affect rights and duties that  
6 have matured, penalties that were incurred, and proceedings that  
7 were begun before the effective date of the surrender of a  
8 license under this section.

9       §454F-P Change in control of a licensee; fees. (a) A  
10 licensee shall submit to the commissioner an application  
11 requesting approval of a proposed change of control of the  
12 licensee, accompanied by an application fee of \$500, payable to  
13 the division.

14       (b) The commissioner shall approve a request for change of  
15 control under subsection (a) if, after investigation, the  
16 commissioner determines that the person or group of persons  
17 requesting approval has the competence, experience, character,  
18 and general fitness to control the licensee or person in control  
19 of the licensee in a lawful and proper manner, and that the  
20 interests of the public will not be jeopardized by the change of  
21 control."



1 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) No department of the State other than the attorney  
4 general may employ or retain any attorney, by contract or  
5 otherwise, for the purpose of representing the State or the  
6 department in any litigation, rendering legal counsel to the  
7 department, or drafting legal documents for the department;  
8 provided that the foregoing provision shall not apply to the  
9 employment or retention of attorneys:

10 (1) By the public utilities commission, the labor and  
11 industrial relations appeals board, and the Hawaii  
12 labor relations board;

13 (2) By any court or judicial or legislative office of the  
14 State; provided that if the attorney general is  
15 requested to provide representation to a court or  
16 judicial office by the chief justice or the chief  
17 justice's designee, or to a legislative office by the  
18 speaker of the house of representatives and the  
19 president of the senate jointly, and the attorney  
20 general declines to provide such representation on the  
21 grounds of conflict of interest, the attorney general  
22 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
- 2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
- 5 from time to time;
- 6 (5) By the real estate commission for any action involving
- 7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
- 9 involving the contractors recovery fund;
- 10 (7) By the trustees for any action involving the travel
- 11 agency recovery fund;
- 12 (8) By the office of Hawaiian affairs;
- 13 (9) By the department of commerce and consumer affairs for
- 14 the enforcement of violations of chapters 480 and
- 15 485A;
- 16 (10) As grand jury counsel;
- 17 (11) By the Hawaiian home lands trust individual claims
- 18 review panel;
- 19 (12) By the Hawaii health systems corporation, or its
- 20 regional system boards, or any of their facilities;
- 21 (13) By the auditor;
- 22 (14) By the office of ombudsman;



- 1 (15) By the insurance division;
- 2 (16) By the University of Hawaii;
- 3 (17) By the Kahoolawe island reserve commission;
- 4 (18) By the division of consumer advocacy;
- 5 (19) By the office of elections;
- 6 (20) By the campaign spending commission;
- 7 (21) By the Hawaii tourism authority, as provided in
- 8 section 201B-2.5; [~~ex~~]
- 9 (22) By the division of financial institutions for any
- 10 action involving the mortgage loan recovery fund; or
- 11 [~~(22)~~] (23) By a department, in the event the attorney
- 12 general, for reasons deemed by the attorney general to
- 13 be good and sufficient, declines to employ or retain
- 14 an attorney for a department; provided that the
- 15 governor thereupon waives the provision of this
- 16 section."

17 SECTION 5. Section 237-24.8, Hawaii Revised Statutes, is  
 18 amended by amending subsection (b) to read as follows:

19 "(b) As used in this section:

20 "Activities relating to the general servicing of  
 21 [~~fiduciary/custodial~~] fiduciary or custodial accounts" means  
 22 those activities performed by trust companies which are directly



1 or indirectly performed within the [~~fiduciary/custodial~~]  
2 fiduciary or custodial relationship between the trust company or  
3 trust department of a financial institution and its client and  
4 which are not offered to any person outside of the  
5 [~~fiduciary/custodial~~] fiduciary or custodial relationship.

6 "Annual percentage rate" and "finance charge" have the same  
7 meaning as defined in the federal Truth in Lending Act (15  
8 [~~U.S.C. sections~~] United States Code Sections 1605(a) to (c) and  
9 1606).

10 "Deposit" means:

11 (1) Money or its equivalent received or held by a  
12 financial institution in the usual course of business  
13 and for which it has given or is obligated to give  
14 credit to:

15 (A) A commercial (including public deposits),

16 checking, savings, time, or thrift account;

17 (B) A check or draft drawn against a deposit account

18 and certified by the financial institution;

19 (C) A letter of credit; or

20 (D) A traveler's check, on which the financial

21 institution is primarily liable;



- 1           (2) Trust funds received or held by a financial  
2           institution, whether held in the trust department or  
3           held or deposited in any other department of the  
4           financial institution;
- 5           (3) Money received or held by a financial institution, or  
6           the credit given for money or its equivalent received  
7           or held by a financial institution in the usual course  
8           of business for a special or specific purpose,  
9           regardless of the legal relationship thereby  
10          established, including, without being limited to,  
11          escrow funds, funds held as security for an obligation  
12          due the financial institution or others (including  
13          funds held as dealers' reserves) or for securities  
14          loaned by the financial institution, funds deposited  
15          by a debtor to meet maturing obligations, funds  
16          deposited as advance payment on subscriptions to  
17          United States government securities, funds held for  
18          distribution or purchase of securities, funds held to  
19          meet the financial institution's acceptances or  
20          letters of credit, and withheld taxes;





1 (4) Outstanding drafts, cashier's checks, money orders, or  
2 other officer's checks issued in the usual course of  
3 business for any purpose; or

4 (5) Money or its equivalent held as a credit balance by a  
5 financial institution on behalf of its customer if the  
6 financial institution is engaged in soliciting and  
7 holding the balances in the regular course of its  
8 business.

9 "Financial institution" means banks, building and loan  
10 associations, development companies, financial corporations,  
11 financial services loan companies, small business investment  
12 companies, financial holding companies, mortgage loan originator  
13 companies [7] as defined in chapter 454F, and trust companies all  
14 as defined in chapter 241.

15 "Leasing of personal property" occurs if:

- 16 (1) The lease is to serve as the functional equivalent of  
17 an extension of credit to the lessee of the property;
- 18 (2) The property to be leased is acquired specifically for  
19 the leasing transaction under consideration, or was  
20 acquired specifically for an earlier leasing  
21 transaction;



- 1           (3) The lease is on a nonoperating basis [~~7 i.e. 7~~] where  
2           the financial institution may not, directly or  
3           indirectly:
- 4           (A) Provide for the maintenance, repair, replacement,  
5           or servicing of the leased property during the  
6           lease term;
- 7           (B) Purchase parts and accessories in bulk or for an  
8           individual property after the lessee has taken  
9           delivery of the property; or
- 10          (C) Purchase insurance for the lessee;
- 11          (4) At the inception of the lease the effect of the  
12          transaction will yield a return that will compensate  
13          the lessor financial institution for not less than the  
14          lessor's full investment in the property plus the  
15          estimated total cost of financing the property over  
16          the term of the lease, from:
- 17          (A) Rentals;
- 18          (B) Estimated tax<sup>c</sup> benefits [~~+~~], including capital  
19          goods excise tax credit, net economic gain from  
20          tax deferral from accelerated depreciation, and  
21          other tax benefits with a substantially similar  
22          effect [~~+~~]; and



- 1 (C) The estimated residual value of the property at  
2 the expiration of the initial term of the lease;
- 3 (5) The maximum lease term during which the lessor  
4 financial institution [~~must~~] shall recover the  
5 lessor's full investment in the property, plus the  
6 estimated total cost of financing the property, shall  
7 be forty years; and
- 8 (6) At the expiration of the lease, [~~+~~]including any  
9 renewals or extensions with the same lessee[~~+~~], all  
10 interest in the property shall be either liquidated or  
11 leased again on a nonoperating basis as soon as  
12 practicable [~~+~~] but in no event later than two years  
13 from the expiration of the lease [~~+~~, ~~but~~]; provided  
14 that in no case shall the lessor retain any interest  
15 in the property beyond fifty years after the lessor's  
16 acquisition of the property."

17 SECTION 6. Section 241-1, Hawaii Revised Statutes, is  
18 amended by amending the definition of "mortgage loan company" to  
19 read as follows:

20 "Mortgage loan company" means [~~any company licensed under~~  
21 ~~chapter 454-~~] a mortgage loan originator company licensed under  
22 chapter 454F."



1 SECTION 7. Section 412:3-502, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§412:3-502 Foreign financial institution. No foreign  
4 financial institution shall receive deposits, lend money, or pay  
5 checks, negotiate orders of withdrawal or share drafts from any  
6 principal office, branch, agency, automatic teller machine, or  
7 other location in this [~~State,~~] state, unless expressly  
8 authorized by this chapter, other laws of this State, or federal  
9 law; provided that nothing in this section shall prohibit any  
10 foreign financial institution from participating in the  
11 disbursement of cash through an automatic teller machine network  
12 or from operating from any location in this [~~State~~] state as a  
13 [~~mortgage broker licensed under chapter 454, loan originator~~  
14 ~~licensed]~~ licensee under chapter 454F, or as a real estate  
15 collection servicing agent."

16 SECTION 8. Section 454F-1, Hawaii Revised Statutes, is  
17 amended as follows:

18 1. By adding twelve new definitions to be appropriately  
19 inserted and to read:

20 ""Borrower" means a person who has applied for or obtained  
21 a residential mortgage loan from or through a licensed mortgage  
22 loan originator or mortgage loan originator company or from a



1 person required to be licensed as a mortgage loan originator or  
2 mortgage loan originator company under this chapter.

3 "Branch office" means any location, separate from the  
4 principal place of business of the mortgage loan originator  
5 company that is identified by any means to the public or  
6 customers as a location at which the licensee holds itself out  
7 as a mortgage loan originator company.

8 "Control" means the power, either directly or indirectly,  
9 to direct management or policies of a company, whether through  
10 ownership of securities, by contract, or otherwise.

11 "Control person" means an individual who directly or  
12 indirectly exercises control over a licensee or applicant.

13 "Division" means the division of financial institutions of  
14 the department of commerce and consumer affairs.

15 "Employee" means an individual who is:

16 (1) Hired to provide services for a licensee on a regular  
17 basis in exchange for compensation and who does not  
18 provide these services as part of the individual's  
19 independent business;

20 (2) Subject to tax withholding, the Federal Income  
21 Contributions Act, and other lawful deductions by the  
22 licensee as a condition of employment; and



1       (3) Subject to the right of the licensee to direct and  
2           control the actions of the individual.

3       "Exempt registered mortgage loan originator company" means  
4       any person, including an insured depository institution, who is  
5       required to be licensed by any other state or federal law but is  
6       not required to be licensed under this chapter, and has the  
7       obligation to register with the Nationwide Mortgage Licensing  
8       System because one or more of the person's employees engage in  
9       the business of a mortgage loan originator.

10       "Independent contractor" means any person who has a  
11       contractual arrangement to perform mortgage loan originating,  
12       underwriting, or loan processing services to a licensee, but is  
13       not an employee of a licensee.

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

15       "Licensee" means a mortgage loan originator, a mortgage  
16       loan originator company, or a person who is required to be  
17       licensed under this chapter. Licensee does not include an  
18       exempt registered mortgage loan originator or exempt registered  
19       mortgage loan originator company as defined by this section.

20       "Mortgage loan originator company" means:



1       (1) An individual not exempt under section 454F-2 who  
2       engages in the business of a mortgage loan originator  
3       as a sole proprietorship; or

4       (2) A person not exempt under section 454F-2 who employs  
5       or uses the exclusive services of one or more mortgage  
6       loan originators licensed or required to be licensed  
7       under this chapter.

8       "Taking a residential mortgage loan application" means  
9       receipt of a request or of a response to a solicitation of an  
10      offer from a borrower, either directly or indirectly, for the  
11      purpose of deciding whether or not to extend an offer of a loan  
12      to the borrower. Taking a residential mortgage loan application  
13      does not include mere physical handling or transmission of a  
14      form."

15       2. By amending the definitions of "advertisement" or  
16      "advertising", "applicant", "insured depository institution",  
17      "loan processor or underwriter", "mortgage loan originator",  
18      "Nationwide Mortgage Licensing System", "registered mortgage  
19      loan originator", and "residential mortgage loan" to read:

20        "Advertisement" or "advertising" means:

21        (1) Issuing any card, sign, or device to any person;



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





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

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

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

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

16          "Mortgage loan originator" ~~[means]~~ :

17          (1) Means an individual who for compensation or gain or in  
18           the expectation of compensation or gain:

19          ~~[-(1)]~~ (A) Takes a residential mortgage loan application; or

20          ~~[-(2)]~~ (B) Offers or negotiates terms of a residential  
21           mortgage loan~~[-]~~; and



1           (2) Includes an independent contractor as defined in this  
2                   section.

3           "Nationalwide Mortgage Licensing System" means a mortgage  
4           licensing system developed and maintained by the Conference of  
5           State Bank Supervisors and the American Association of  
6           Residential Mortgage Regulators for the licensing and  
7           registration of "~~licensed~~ mortgage loan originators~~[-]~~,  
8           mortgage loan originator companies, exempt registered mortgage  
9           loan originators, and exempt registered mortgage loan originator  
10           companies as defined by this chapter.

11           ~~"Registered"~~ "Exempt registered mortgage loan originator"  
12           means any individual who:

13           (1) Meets the definition of mortgage loan originator and  
14           is an employee of:

15                   (A) An insured depository institution;

16                   (B) A subsidiary that is:

17                           (i) Owned and controlled by an insured  
18                                   depository institution; and

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

20                   (C) An institution regulated by the Farm Credit  
21                   Administration; and



1           (2) Is registered with, and maintains a unique identifier  
2           through, the Nationwide Mortgage Licensing System [~~and~~  
3           ~~Registry.~~] but is not required to be licensed under  
4           this chapter.

5           "Residential mortgage loan" or "residential mortgage  
6           transaction" means any loan primarily for personal, family, or  
7           household use that is secured by a mortgage, deed of trust, or  
8           other equivalent consensual security interest on a dwelling as  
9           defined in Section 103(v) of the Truth in Lending Act, 15 United  
10          States Code [~~Section 1601 et seq.~~] Section 1602 or residential  
11          real estate."

12          SECTION 9. Section 454F-2, Hawaii Revised Statutes, is  
13          amended to read as follows:

14          "~~[+]~~ §454F-2 ~~[+]~~ **Exemptions.** This chapter shall not apply  
15          to the following:

16          (1) [A] An exempt registered mortgage loan originator,  
17          when acting for an insured depository institution, a  
18          subsidiary of an insured depository institution  
19          regulated by a federal banking agency, or an  
20          institution regulated by the Farm Credit  
21          Administration;



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



1 ~~items, that the individual can or will perform any of~~  
2 ~~the activities of a mortgage loan originator, and any~~  
3 ~~loan processor or underwriter, including an~~  
4 ~~independent contractor, who advertises that the~~  
5 ~~individual can or will perform any of the activities~~  
6 ~~of a mortgage loan originator or engages in the~~  
7 ~~activities of a mortgage loan originator shall not be~~  
8 ~~exempt under this chapter and shall obtain and~~  
9 ~~maintain a license under this chapter and a valid~~  
10 ~~unique identifier issued by the Nationwide Mortgage~~  
11 ~~Licensing System;~~

12 ~~(6)]~~ (5) A person or entity that only performs real estate  
13 brokerage activities and is licensed or registered by  
14 the State unless the person or entity is compensated  
15 by a lender, a mortgage [~~broker,~~] loan originator  
16 company, or other mortgage loan originator or by an  
17 agent of the lender, mortgage [~~broker,~~] loan  
18 originator company, or other mortgage loan originator;  
19 [~~or~~

20 ~~(7)]~~ (6) A person or entity solely involved in extensions  
21 of credit relating to timeshare plans, as the term is



1 defined in Section 101(53D) of Title 11, United States  
2 Code [-];

3 (7) An exempt registered mortgage loan originator company  
4 as defined by this chapter; or

5 (8) An insured depository institution."

6 SECTION 10. Section 454F-3, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[+] §454F-3 [+] Requirement of licensure. (a) Effective  
9 [~~August 1, 2010,~~] January 1, 2011, or such later date approved  
10 by the United States Department of Housing and Urban Development  
11 pursuant to the authority granted under Public Law 110-289,  
12 Section 1508(e), [~~an individual,~~] 12 United States Code Section  
13 5107(e), a person, unless specifically exempted from this  
14 chapter, shall not engage in the business of a mortgage loan  
15 originator or mortgage loan originator company with respect to  
16 any dwelling located in this [State] state without first  
17 obtaining and maintaining annually, a license under this  
18 chapter. Each licensed mortgage loan originator or mortgage  
19 loan originator company shall register with and maintain a valid  
20 unique identifier issued by the Nationwide Mortgage Licensing  
21 System, and shall submit to the Nationwide Mortgage Licensing  
22 System any reports that shall be in a form and contain



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

3 (b) An independent contractor shall not engage in the  
4 activities of a loan processor or underwriter without a license  
5 pursuant to section 454F-4. Each independent contractor  
6 licensed as a mortgage loan originator shall obtain and maintain  
7 a valid unique identifier issued by the Nationwide Mortgage  
8 Licensing System. An independent contractor who is not an  
9 exclusive agent of a mortgage loan originator company, in  
10 addition to obtaining a license as a mortgage loan originator,  
11 shall obtain a license as a mortgage loan originator company.

12 (c) A loan processor or underwriter who does not represent  
13 to the public, through advertising or other means of  
14 communicating or providing information, including through  
15 business cards, stationery, brochures, signs, rate lists, or  
16 other promotional items, that the individual can or will perform  
17 any of the activities of a mortgage loan originator, who does  
18 not advertise that the individual can or will perform any of the  
19 activities of a mortgage loan originator, and who does not  
20 engage in the activities of a mortgage loan originator shall not  
21 be required to be licensed under this chapter."



1 SECTION 11. Section 454F-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§454F-4[+] License and registration; application;  
4 issuance. (a) Applicants for a license shall apply in a form  
5 as prescribed by the Nationwide Mortgage Licensing System or by  
6 the commissioner.

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

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

20 (d) In connection with an application for ~~[licensing as a~~  
21 ~~mortgage loan originator,]~~ a license under this chapter, the  
22 applicant, at a minimum, shall furnish to the commissioner and





1 to the Nationwide Mortgage Licensing System information  
2 concerning the applicant's identity, including:

- 3 (1) Fingerprints of the applicant and, in the case of an  
4 applicant that is not an individual, each of the  
5 applicant's control persons, executive officers,  
6 directors, general partners, and managing members for  
7 submission to the Federal Bureau of Investigation, and  
8 any governmental agency or entity authorized to  
9 receive the fingerprints for a state, national, and  
10 international criminal history background check; and
- 11 (2) Personal history and experience of the applicant and,  
12 in the case of an applicant that is not an individual,  
13 each of the applicant's control persons, executive  
14 officers, directors, general partners, and managing  
15 members in a form prescribed by the Nationwide  
16 Mortgage Licensing System including the submission of  
17 authorization for the Nationwide Mortgage Licensing  
18 System and the commissioner to obtain:
- 19 (A) An independent credit report obtained from a  
20 consumer reporting agency described in Section  
21 603(p) of the Fair Credit Reporting Act, 15  
22 United States Code 1681 et seq.; and



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

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

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

11 (g) An applicant for a license as a mortgage loan  
12 originator company that is a person other than an individual  
13 shall be registered with the business registration division of  
14 the department of commerce and consumer affairs to do business  
15 in this state before a license pursuant to this chapter shall be  
16 granted."

17 SECTION 12. Section 454F-5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[+] §454F-5 [+] **Issuance of license.** (a) The commissioner  
20 shall not issue a [~~mortgage loan originator~~] license pursuant to  
21 this chapter unless the commissioner makes at a minimum the  
22 following findings:



- 1           (1) The applicant, or in the case of an applicant that is  
2           not an individual, each of the applicant's control  
3           persons, executive officers, directors, general  
4           partners, and managing members, has never had a  
5           mortgage loan originator or a mortgage loan originator  
6           company license revoked in any jurisdiction; provided  
7           that a subsequent formal vacation of a revocation  
8           shall not be deemed a revocation;
- 9           (2) The applicant, or in the case of an applicant that is  
10          not an individual, each of the applicant's control  
11          persons, executive officers, directors, general  
12          partners, and managing members, has not been convicted  
13          of, or pled guilty or nolo contendere, or been granted  
14          a deferred acceptance of a guilty plea under chapter  
15          853 to a felony in a domestic, foreign, or military  
16          court:
- 17               (A) During the seven-year period preceding the date  
18               of the application for licensing and  
19               registration; or
- 20               (B) At any time preceding the date of application, if  
21               the felony involved an act of fraud, dishonesty,  
22               breach of trust, or money laundering;



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

3 (3) The applicant, or in the case of an applicant that is  
4 not an individual, each of the applicant's control  
5 persons, executive officers, directors, general  
6 partners, and managing members, has demonstrated  
7 financial responsibility, character, and general  
8 fitness to command the confidence of the community and  
9 to warrant a determination that the [~~mortgage loan~~  
10 ~~originator~~] applicant shall operate honestly, fairly,  
11 and efficiently pursuant to this chapter. For  
12 purposes of this paragraph, 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~~] a  
16 person has not shown financial responsibility may be  
17 based on:

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

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

22 (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, or in the case of an applicant that is  
4 not an individual, each of the applicant's control  
5 persons, executive officers, directors, general  
6 partners, and managing members, has not been convicted  
7 of any misdemeanor involving an act of fraud,  
8 dishonesty, breach of trust, or money laundering;

9 ~~[(4)]~~ (5) The applicant, or in the case of an applicant  
10 that is not an individual, each individual mortgage  
11 loan originator who is employed by the mortgage loan  
12 originator company or who provides exclusive services  
13 to the applicant as a mortgage loan originator, has  
14 completed the pre-licensing education requirement  
15 described in section 454F-6;

16 ~~[(5)]~~ (6) The applicant, or in the case of an applicant  
17 that is not an individual, each individual mortgage  
18 loan originator who is employed by the mortgage loan  
19 originator company or who provides exclusive services  
20 to the applicant as a mortgage loan originator, has  
21 passed a written test that meets the test requirements  
22 in section 454F-7; and



1        [~~(6)~~] (7) The applicant has met the [~~surety bond~~] mortgage  
2                    loan recovery fund requirement as required in section  
3                    [~~454F-13-~~] 454F-C.

4            (b) The applicant, or in the case of an applicant that is  
5 not an individual, each of the applicant's control persons,  
6 executive officers, directors, general partners, and managers,  
7 shall submit authorization to the commissioner for the  
8 commissioner to conduct background checks to determine or verify  
9 the information in subsection (a) in each state where the person  
10 has conducted mortgage loan origination activities.  
11 Authorization pursuant to this subsection shall include consent  
12 to provide additional fingerprints, if necessary, to law  
13 enforcement or regulatory bodies in other states."

14            SECTION 13. Section 454F-6, Hawaii Revised Statutes, is  
15 amended as follows:

16            1. By amending subsection (a) to read:

17            "(a) [~~A person~~] An applicant for licensure as a mortgage  
18 loan originator shall complete at least twenty hours of  
19 pre-licensing education approved in accordance with subsection  
20 (b) that includes:

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



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

4           (3) Two hours of training related to lending standards for  
5           the nontraditional mortgage product marketplace."

6           2. By amending subsection (e) to read:

7           "(e) The pre-licensing education requirements approved by  
8           the Nationwide Mortgage Licensing System [~~in subsection (a)~~] for  
9           any state shall be accepted as credit towards completion of pre-  
10          licensing education requirements in this [~~State.~~] state."

11          SECTION 14. Section 454F-7, Hawaii Revised Statutes, is  
12          amended as follows:

13          1. By amending subsection (a) to read:

14          "(a) [~~In order to~~] To meet the passing of the written test  
15          requirement in section 454F-5, an applicant for licensure as a  
16          mortgage loan originator shall pass, in accordance with the  
17          standards established under this section, a qualified written  
18          test developed by the Nationwide Mortgage Licensing System and  
19          administered by a test provider approved by the Nationwide  
20          Mortgage Licensing System based upon reasonable standards."



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

14           SECTION 15. Section 454F-8, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           " [†] §454F-8 [†] **Standards for license renewal.** (a) The  
17 minimum standards for license renewal for mortgage loan  
18 originators shall include the following:

19           (1) The mortgage loan originator continues to meet the  
20           minimum standards for licensure under section 454F-5;



1 (2) The mortgage loan originator has satisfied the annual  
2 continuing education requirements in section 454F-9;  
3 and

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

6 (b) The minimum standards for license renewal for mortgage  
7 loan originator companies shall include the following:

8 (1) The mortgage loan originator company continues to meet  
9 the minimum standards for licensure established  
10 pursuant to section 454F-5;

11 (2) The mortgage loan originator company's qualified  
12 manager has satisfied the minimum standards for  
13 license renewal; and

14 (3) The mortgage loan originator company has paid all  
15 required fees for renewal of the license.

16 ~~[(b)]~~ (c) The license of a mortgage loan originator [wher]  
17 or mortgage loan originator company that fails to satisfy the  
18 minimum standards for license renewal shall expire. The  
19 commissioner may adopt procedures for the reinstatement of  
20 expired licenses consistent with section 454F-K and the  
21 standards established by the Nationwide Mortgage Licensing  
22 System."



1 SECTION 16. Section 454F-9, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsections (d) and (e) to read:

4 "(d) Continuing education may be offered either in a  
5 classroom, online, or by any other means approved by the  
6 Nationwide Mortgage Licensing System [~~and Registry~~].

7 (e) A licensed mortgage loan originator:

- 8 (1) May only receive credit for a continuing education  
9 course in the year in which the course is taken,  
10 except for continuing education credits received  
11 pursuant to this chapter; and
- 12 (2) May not take the same approved course in the same or  
13 successive years to meet the annual requirements for  
14 continuing education[-]; provided that the term  
15 "successive years" shall mean the two years following  
16 the year in which a mortgage loan originator takes an  
17 approved course."

18 2. By amending subsection (i) to read:

19 "(i) [~~A person~~] The license of a licensee meeting the  
20 requirements of section 454F-8(a)(1) and (3) [may make up any  
21 deficiency in continuing education as established by rule  
22 adopted by the commissioner] shall expire if the licensee fails



1 to meet the minimum requirements for continuing education.  
2 Reinstatement of the expired license shall be allowed as  
3 provided for in section 454F-K."

4 SECTION 17. Section 454F-10, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 " ~~[+]~~ §454F-10 ~~[+]~~ Authority to require license. In addition  
7 to any other duties imposed upon the commissioner, the  
8 commissioner shall require mortgage loan originators and  
9 mortgage loan originator companies to be licensed and registered  
10 through the Nationwide Mortgage Licensing System. The  
11 commissioner is authorized to participate in the Nationwide  
12 Mortgage Licensing System. The commissioner may establish by  
13 rule pursuant to chapter 91, requirements for mortgage loan  
14 originators ~~[+]~~ and mortgage loan originator companies,  
15 including:

- 16 (1) Background checks of:
- 17 (A) Criminal history through fingerprint or other  
18 databases;
- 19 (B) Civil or administrative records;
- 20 (C) Credit history; and



- 1 (D) Any other source deemed necessary by the  
2 Nationwide Mortgage Licensing System [and  
3 Registry];
- 4 (2) Fees to apply for or renew licenses through the  
5 Nationwide Mortgage Licensing System;
- 6 (3) The setting or resetting as necessary of license  
7 renewal and reporting dates;
- 8 (4) Requirements for amending or surrendering a license;  
9 and
- 10 (5) Any other activity the commissioner deems necessary to  
11 participate in the Nationwide Mortgage Licensing  
12 System."

13 SECTION 18. Section 454F-11, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§454F-11[+] Nationwide Mortgage Licensing System;  
16 registry information; challenge process. The commissioner shall  
17 establish a process by rule pursuant to chapter 91 whereby  
18 [~~mortgage loan originators~~] a licensee may challenge information  
19 entered into the Nationwide Mortgage Licensing System by the  
20 commissioner."

21 SECTION 19. Section 454F-12, Hawaii Revised Statutes, is  
22 amended to read as follows:



1 " ~~[+]~~ §454F-12 ~~[+]~~ Enforcement authorities; violations;  
2 penalties. (a) ~~[In order to]~~ To ensure the effective  
3 supervision and enforcement of this chapter, the commissioner  
4 may, pursuant to 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]~~ licensee fails at any time to meet the  
12 requirements of section 454F-6 or section 454F-8,  
13 violates section 454F-17, or withholds information or  
14 makes a material misstatement in an application for a  
15 license or renewal of a license;

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

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

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

21 (A) Order or direct persons subject to this chapter  
22 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~~] an  
17 administrative fine on a [~~mortgage loan originator~~] licensee or  
18 person subject to this chapter if the commissioner finds on the  
19 record after notice and opportunity for hearing that the  
20 [~~mortgage loan originator~~] licensee or person subject to this  
21 chapter has violated or failed to comply with any requirement of  
22 this chapter or any rule prescribed by the commissioner under



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

3 (c) The maximum [~~penalty~~] fine for each act or omission  
4 described 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 (e) Notwithstanding section 480-13.5, any violation of  
9 this chapter that is directed toward, targets, or injures an  
10 elder, may be subject to an additional civil penalty not in  
11 excess of \$10,000 for each violation in addition to any other  
12 finances or penalties assessed for the violation."

13 SECTION 20. Section 454F-15, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+] §454F-15 [+] Investigation and examination authority.

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



- 1 (1) Criminal, civil, and administrative history  
2 information, including nonconviction data under  
3 chapter 853;
- 4 (2) Personal history and experience information including  
5 independent credit reports obtained from a consumer  
6 reporting agency described in Section 603(p) of the  
7 Fair Credit Reporting Act; and
- 8 (3) Any other documents, information, or evidence the  
9 commissioner deems relevant to the inquiry or  
10 investigation, regardless of the location, possession,  
11 control, or custody of the documents, information, or  
12 evidence.
- 13 (b) For the purposes of investigating violations or  
14 complaints arising under this chapter, or for the purposes of  
15 examination, the commissioner may review, investigate, or  
16 examine any [~~licensed mortgage loan originator, individual,~~  
17 licensee or person subject to this chapter, as often as  
18 necessary [~~in order~~] to carry out the purposes of this chapter.  
19 The commissioner may direct, subpoena, or order the attendance  
20 of, and examine under oath all persons whose testimony may be  
21 required about loans or the business or subject matter of any  
22 examination or investigation, and may direct, subpoena, or order





1 the person to produce books, accounts, records, files, and any  
2 other documents the commissioner deems relevant to the inquiry.

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

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

- 18 (1) Accounting compilations;  
19 (2) Information lists and data concerning loan  
20 transactions in a format prescribed by the  
21 commissioner; or



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

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

21 (f) [~~The~~] To carry out the purposes of this chapter, the  
22 commissioner may:



- 1 (1) Retain attorneys, accountants, or other professionals  
2 and specialists, who may be exempt from chapter 76, as  
3 examiners, auditors, or investigators to conduct or  
4 assist in the conduct of examinations or  
5 investigations;
- 6 (2) Enter into agreements or relationships with other  
7 government officials or regulatory associations in  
8 order to improve efficiencies and reduce regulatory  
9 burden by sharing resources, standardized or uniform  
10 methods or procedures, and documents, records,  
11 information, or evidence obtained under this section;
- 12 (3) Use, hire, contract, or employ public or privately  
13 available analytical systems, methods, or software to  
14 examine or investigate the [~~licensed mortgage loan~~  
15 ~~originator, individual,~~] licensee or person subject to  
16 this chapter;
- 17 (4) Accept and rely on examination or investigation  
18 reports made by other government officials, within or  
19 without this [~~State,~~] state; and
- 20 (5) Accept audit reports made by an independent certified  
21 public accountant for the [~~licensed mortgage loan~~  
22 ~~originator, individual,~~] licensee or person subject to



1           this chapter in the course of that part of the  
2           examination covering the same general subject matter  
3           as the audit and may incorporate the audit report in  
4           the report of the examination, report of  
5           investigation, or other writing of the commissioner.

6           (g) The authority of this section shall remain in effect,  
7           whether [~~such licensed mortgage loan originator, individual,~~] a  
8           licensee or person subject to this chapter acts or claims to act  
9           under any licensing or registration law of this [~~State,~~] state,  
10          or claims to act without such authority.

11          (h) No [~~licensed mortgage loan originator, individual,~~]  
12          licensee or person subject to investigation or examination under  
13          this section may knowingly withhold, abstract, remove, mutilate,  
14          destroy, or secrete any books, records, computer records, or  
15          other information.

16          (i) The commissioner may charge an examination or  
17          investigation fee, payable to the division, based upon the cost  
18          per hour per examiner for all [~~mortgage loan originators~~]  
19          licensees and persons subject to this chapter examined or  
20          investigated by the commissioner or the commissioner's staff.  
21          The hourly fee shall be \$40 or an amount as the commissioner  
22          shall establish by rule pursuant to chapter 91. In addition to



1 the examination or investigation fee, the commissioner may  
2 charge any person that is examined or investigated by the  
3 commissioner or the commissioner's staff pursuant to this  
4 section additional amounts for travel, per diem, mileage, and  
5 other reasonable expenses incurred in connection with the  
6 examination or investigation, payable to the division.

7 (j) Any person having reason to believe that this chapter  
8 or the rules adopted pursuant thereto have been violated, or  
9 that a license issued under this chapter should be suspended or  
10 revoked, may file a written complaint with the commissioner  
11 setting forth the details of the alleged violation or grounds  
12 for suspension or revocation."

13 SECTION 21. Section 454F-16, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~[+] §454F-16 [.]~~ Mortgage call reports. Each [~~licensed~~  
16 ~~mortgage originator~~] licensee, as may be required by 12 United  
17 States Code Sections 5101 to 5116, shall submit to the  
18 Nationwide Mortgage Licensing System reports of condition, using  
19 the form entitled "REPORT OF CONDITION", which shall be in  
20 [such] the form and contain [such] the information as the  
21 Nationwide Mortgage Licensing System may require."



1 SECTION 22. Section 454F-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[§] §454F-17 [§]~~ Prohibited practices. It shall be a  
4 violation of this chapter for a ~~[mortgage loan originator]~~  
5 licensee or person subject to this chapter to:

6 (1) Directly or indirectly employ any scheme, device, or  
7 artifice to defraud or mislead borrowers or lenders or  
8 to defraud any person;

9 (2) Engage in any unfair or deceptive practice toward any  
10 person;

11 (3) Obtain property by fraud or misrepresentation;

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

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



- 1 (6) Conduct any business covered by this chapter without  
2 holding a valid license as required under this  
3 chapter, or assist or aid and abet any person in the  
4 conduct of business under this chapter without a valid  
5 license as required under this chapter;
- 6 (7) Fail to make disclosures as required by this chapter  
7 and any other applicable state or federal law  
8 including rules or regulations thereunder;
- 9 (8) Fail to comply with this chapter or [~~rules~~] any order  
10 or rule issued or adopted under the authority of this  
11 chapter, or fail to comply with any other state or  
12 federal law, including the rules and regulations  
13 adopted thereunder, applicable to any business  
14 authorized or conducted pursuant to this chapter;
- 15 (9) Make, in any manner, any false or deceptive statement  
16 or representation, including with regard to the rates,  
17 points, or other financing terms or conditions for a  
18 residential mortgage loan, or engage in bait and  
19 switch advertising;
- 20 (10) Negligently make any false statement or provide any  
21 misleading information or knowingly and wilfully make  
22 any omission of material fact in connection with any



1 information or reports filed with a governmental  
2 agency or the Nationwide Mortgage Licensing System,  
3 including an application for a license under this  
4 chapter, or in connection with any examination or  
5 investigation conducted by the commissioner or another  
6 government agency;

7 (11) Make any payment, threat, or promise, directly or  
8 indirectly, to any person for the purposes of  
9 influencing the independent judgment of the person in  
10 connection with a residential mortgage loan, or make  
11 any payment, threat, or promise, directly or  
12 indirectly, to any appraiser of a property for the  
13 purpose of influencing the independent judgment of the  
14 appraiser with respect to the value of a property;

15 (12) Collect, charge, attempt to collect or charge, or use  
16 or propose any agreement purporting to collect or  
17 charge any fee prohibited by this chapter;

18 (13) Cause or require a borrower to obtain property  
19 insurance coverage in an amount that exceeds the  
20 replacement cost of the improvements as established by  
21 the property insurer;





- 1 (14) Fail to truthfully account for moneys belonging to a
- 2 party to a residential mortgage loan transaction; or
- 3 (15) Deliver a misleading or deceptive communication or
- 4 advertisement, whether written, electronic, or oral,
- 5 when marketing or soliciting a residential mortgage
- 6 loan. A communication or advertisement that uses the
- 7 name or trademark of a financial institution as
- 8 defined in section 412:1-109 or its affiliates or
- 9 subsidiaries, or infers that the communication or
- 10 advertisement is from, endorsed by, is related to, or
- 11 is the responsibility of the financial institution is
- 12 a misleading or deceptive communication. Advertising
- 13 that a specific interest rate, points, or financial
- 14 terms are available when the rates, points, or
- 15 financial terms are not actually available is a
- 16 misleading or deceptive communication."

17 SECTION 23. Section 454F-18, Hawaii Revised Statutes, is  
 18 amended by amending subsection (b) to read as follows:

19 "(b) In addition to any other powers provided by law, the  
 20 commissioner shall have the authority to:

- 21 (1) Administer and enforce the provisions and requirements
- 22 of this chapter;



- 1           (2) Adopt, amend, or repeal rules and issue declaratory  
2           rulings or informal nonbinding interpretations;
- 3           (3) Develop requirements for licensure through rules,  
4           including establishing the content of the written  
5           tests required under section 454F-7;
- 6           (4) Investigate and conduct hearings regarding any  
7           violation of this chapter or any rule or order of, or  
8           agreement with, the commissioner;
- 9           (5) Create fact-finding committees that may make  
10          recommendations to the commissioner for the  
11          commissioner's deliberations;
- 12          (6) Require an applicant or any of its control persons,  
13          officers, directors, employees, partners, members,  
14          managers, and agents to disclose their relevant  
15          criminal history and request a criminal history record  
16          check in accordance with chapter 846;
- 17          (7) Contract with or employ qualified persons, including  
18          investigators, examiners, or auditors who may be  
19          exempt from chapter 76 and who shall assist the  
20          commissioner in exercising the commissioner's powers  
21          and duties;



- 1 (8) Require that all fees, fines, and charges collected by
- 2 the commissioner under this chapter, except for fees
- 3 designated for deposit into the mortgage loan recovery
- 4 fund pursuant to section 454F-C, be deposited into the
- 5 compliance resolution fund established pursuant to
- 6 section 26-9(o);
- 7 (9) [~~Subpoena~~] Process and investigate complaints,
- 8 subpoena witnesses and documents, administer oaths,
- 9 and receive affidavits and oral testimony, including
- 10 telephonic communications, and do any and all things
- 11 necessary or incidental to the exercise of the
- 12 commissioner's power and duties, including the
- 13 authority to conduct contested case proceedings under
- 14 chapter 91; and
- 15 (10) Require a [~~mortgage loan originator~~] licensee to
- 16 comply with any rule, guidance, guideline, statement,
- 17 supervisory policy or any similar proclamation issued
- 18 or adopted by the Federal Deposit Insurance
- 19 Corporation to the same extent and in the same manner
- 20 as a bank chartered by the State or in the
- 21 alternative, any policy position of the Conference of
- 22 State Bank Supervisors."



1 SECTION 24. Section 454F-19, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~f~~]§454F-19[+] Unique identifier shown. The unique  
4 identifier of any person originating a residential mortgage  
5 loan, except a person who is exempt from this chapter, shall be  
6 clearly shown on all residential mortgage loan application  
7 forms, solicitations, or advertisements, including business  
8 cards or websites, and any other documents as established by  
9 rule or order of the commissioner."

10 SECTION 25. Section 477E-2, Hawaii Revised Statutes, is  
11 amended by amending the definition of "creditor" to read as  
12 follows:

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



1 participates in the decision to grant, extend, renew, or to  
2 continue a loan of money or credit."

3 SECTION 26. Section 846-2.7, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

- 6 (1) The department of health on operators of adult foster  
7 homes or developmental disabilities domiciliary homes  
8 and their employees, as provided by section 333F-22;
- 9 (2) The department of health on prospective employees,  
10 persons seeking to serve as providers, or  
11 subcontractors in positions that place them in direct  
12 contact with clients when providing non-witnessed  
13 direct mental health services as provided by section  
14 321-171.5;
- 15 (3) The department of health on all applicants for  
16 licensure for, operators for, [and] prospective  
17 employees, and volunteers at one or more of the  
18 following: skilled nursing facility, intermediate  
19 care facility, adult residential care home, expanded  
20 adult residential care home, assisted living facility,  
21 home health agency, hospice, adult day health center,  
22 special treatment facility, therapeutic living



- 1 program, intermediate care facility for the mentally  
2 retarded, hospital, rural health center and  
3 rehabilitation agency, and, in the case of any of the  
4 [~~above-related~~] above facilities operating in a  
5 private residence, on any adult living in the facility  
6 other than the client as provided by section 321-15.2;
- 7 (4) The department of education on employees, prospective  
8 employees, and teacher trainees in any public school  
9 in positions that necessitate close proximity to  
10 children as provided by section 302A-601.5;
- 11 (5) The counties on employees and prospective employees  
12 who may be in positions that place them in close  
13 proximity to children in recreation or child care  
14 programs and services;
- 15 (6) The county liquor commissions on applicants for liquor  
16 licenses as provided by section 281-53.5;
- 17 (7) The department of human services on operators and  
18 employees of child caring institutions, child placing  
19 organizations, and foster boarding homes as provided  
20 by section 346-17;



- 1           (8) The department of human services on prospective  
2           adoptive parents as established under section  
3           346-19.7;
- 4           (9) The department of human services on applicants to  
5           operate child care facilities, prospective employees  
6           of the applicant, and new employees of the provider  
7           after registration or licensure as provided by section  
8           346-154;
- 9           (10) The department of human services on persons exempt  
10          pursuant to section 346-152 to be eligible to provide  
11          child care and receive child care subsidies as  
12          provided by section 346-152.5;
- 13          (11) The department of human services on operators and  
14          employees of home and community-based case management  
15          agencies and operators and other adults, except for  
16          adults in care, residing in foster family homes as  
17          provided by section 346-335;
- 18          (12) The department of human services on staff members of  
19          the Hawaii youth correctional facility as provided by  
20          section 352-5.5;
- 21          (13) The department of human services on employees,  
22          prospective employees, and volunteers of contracted



- 1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;
- 5 (14) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;
- 7 (15) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers  
11 including the power of arrest as provided by section  
12 353C-5;
- 13 (16) The department of commerce and consumer affairs on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;
- 16 (17) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states  
21 from which the national criminal history record  
22 information was provided pursuant to section 302C-1;





- 1       (18) The public library system on employees and prospective  
2           employees whose positions place them in close  
3           proximity to children as provided by section  
4           302A-601.5;
- 5       (19) The State or any of its branches, political  
6           subdivisions, or agencies on applicants and employees  
7           holding a position that has the same type of contact  
8           with children, vulnerable adults, or persons committed  
9           to a correctional facility as other public employees  
10          who hold positions that are authorized by law to  
11          require criminal history record checks as a condition  
12          of employment as provided by section 78-2.7;
- 13       (20) The department of human services on licensed adult day  
14           care center operators, employees, new employees,  
15           subcontracted service providers and their employees,  
16           and adult volunteers as provided by section 346-97;
- 17       (21) The department of human services on purchase of  
18           service contracted and subcontracted service providers  
19           and their employees serving clients of the adult and  
20           community care services branch, as provided by section  
21           346-97;



- 1           (22) The department of human services on foster grandparent  
2           program, retired and senior volunteer program, senior  
3           companion program, and respite companion program  
4           participants as provided by section 346-97;
- 5           (23) The department of human services on contracted and  
6           subcontracted service providers and their current and  
7           prospective employees that provide home and community-  
8           based services under Section 1915(c) of the Social  
9           Security Act [~~+~~], 42 United States Code Section  
10          1396n(c) [~~+~~], or under any other applicable section or  
11          sections of the Social Security Act for the purposes  
12          of providing home and community-based services, as  
13          provided by section 346-97;
- 14          (24) The department of commerce and consumer affairs on  
15          proposed directors and executive officers of a bank,  
16          savings bank, savings and loan association, trust  
17          company, and depository financial services loan  
18          company as provided by section 412:3-201;
- 19          (25) The department of commerce and consumer affairs on  
20          proposed directors and executive officers of a  
21          nondepository financial services loan company as  
22          provided by section 412:3-301;



- 1       (26) The department of commerce and consumer affairs on the
- 2           original chartering applicants and proposed executive
- 3           officers of a credit union as provided by section
- 4           412:10-103;
  
- 5       (27) The department of commerce and consumer affairs on:
- 6           (A) Each principal of every non-corporate applicant
- 7           for a money transmitter license; and
- 8           (B) The executive officers, key shareholders, and
- 9           managers in charge of a money transmitter's
- 10          activities of every corporate applicant for a
- 11          money transmitter license,
- 12          as provided by section 489D-9;
  
- 13       (28) The department of commerce and consumer affairs on
- 14          applicants for licensure and persons licensed under
- 15          title 24;
  
- 16       (29) The Hawaii health systems corporation on:
- 17           (A) Employees;
- 18           (B) Applicants seeking employment;
- 19           (C) Current or prospective members of the corporation
- 20           board or regional system board; or
- 21           (D) Current or prospective volunteers, providers, or
- 22           contractors,



1 in any of the corporation's health facilities as  
2 provided by section 323F-5.5;

3 ~~[+] (30) [+]~~ The department of commerce and consumer affairs on  
4 ~~[an]~~ :

5 (A) An applicant for a mortgage loan [originator's]  
6 originator license [as provided by chapter 454F];  
7 and

8 (B) Each control person, executive officer, director,  
9 general partner, and manager of an applicant for  
10 a mortgage loan originator company license,  
11 as provided by chapter 454F; and

12 ~~[+] (31) [+]~~ Any other organization, entity, or the State, its  
13 branches, political subdivisions, or agencies as may  
14 be authorized by state law."

15 SECTION 27. Section 454F-13, Hawaii Revised Statutes, is  
16 repealed.

17 ~~["§454F-13] Surety bond; required. (a) Each mortgage~~  
18 ~~loan originator shall be covered by a surety bond in accordance~~  
19 ~~with this section. In the event that the mortgage loan~~  
20 ~~originator is an employee or exclusive agent of a person subject~~  
21 ~~to this chapter, the surety bond of the person may be used in~~  
22 ~~lieu of the mortgage loan originator's surety bond.~~



1       ~~(b) The surety bond shall provide coverage for each~~  
2 ~~mortgage loan originator in an amount prescribed in subsection~~  
3 ~~(c). The surety bond shall be in a form as prescribed by the~~  
4 ~~commissioner. The commissioner may adopt rules pursuant to~~  
5 ~~chapter 91 with respect to the requirements for the surety bonds~~  
6 ~~necessary to accomplish the purposes of this chapter.~~

7       ~~(c) The penal sum of the surety bond shall be maintained~~  
8 ~~in an amount that reflects the dollar amount of loans originated~~  
9 ~~as determined by the commissioner.~~

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

12       ~~(e) Immediately upon recovery of any action on the bond,~~  
13 ~~the commissioner may require the filing of a new bond." ]~~

14       SECTION 28. Section 454F-21, Hawaii Revised Statutes, is  
15 repealed.

16       ~~["~~§454F-21~~ Fees and costs. (a) Each application for a~~  
17 ~~mortgage loan originator license shall be accompanied by an~~  
18 ~~application fee of \$250, or an amount as the commissioner shall~~  
19 ~~establish by rule pursuant to chapter 91.~~

20       ~~(b) Upon obtaining approval for a license, an initial~~  
21 ~~license fee shall be paid to the commissioner in the amount of~~



1 ~~\$175 or an amount as the commissioner shall establish by rule~~  
2 ~~pursuant to chapter 91.~~

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

7 SECTION 29. Chapter 454, Hawaii Revised Statutes, is  
8 repealed.

9 SECTION 30. Act 32, Special Session Laws of Hawaii 2009,  
10 is amended as follows:

11 1. By amending section 8 to read:

12 "SECTION 8. Effective [~~August 1, 2010~~] January 1, 2011:

13 (1) No new license shall be issued and no license renewal  
14 shall be effected under chapter 454, Hawaii Revised  
15 Statutes; and

16 (2) An individual who is subject to this Act shall be  
17 required to be licensed under chapter 454F, Hawaii  
18 Revised Statutes, or by such later date approved by  
19 the United States Department of Housing and Urban  
20 Development, pursuant to the authority granted under  
21 Public Law 110-289, section 1508(e). [~~As of the date~~  
22 ~~that an individual is required to be licensed under~~



1 ~~chapter~~, Hawaii Revised Statutes, the remaining pro  
2 rata balance of the fees paid by the individual under  
3 ~~chapter 454, Hawaii Revised Statutes, shall be applied~~  
4 ~~to the individual's fees due under chapter~~, Hawaii  
5 Revised Statutes, until exhausted.] "

6 2. By amending section 11 to read:

7 "SECTION 11. There is appropriated out of the compliance  
8 resolution fund established pursuant to section 26-9(o), Hawaii  
9 Revised Statutes, the sum of \$159,400 or so much thereof as may  
10 be necessary for fiscal year 2009-2010 to carry out the purposes  
11 of this Act[-], including the hiring of one permanent working  
12 supervisor exempt from chapter 76, Hawaii Revised Statutes,  
13 three permanent examiners exempt from chapter 76, Hawaii Revised  
14 Statutes, and one permanent office assistant in the division of  
15 financial institutions.

16 The sum appropriated shall be expended by the department of  
17 commerce and consumer affairs for the purposes of this Act."

18 SECTION 31. A person licensed under chapter 454F, Hawaii  
19 Revised Statutes, shall not be required to be licensed under  
20 chapter 454, Hawaii Revised Statutes, and shall not be subject  
21 to the provisions of that chapter upon the effective date of the  
22 person's licensure under chapter 454F, Hawaii Revised Statutes;



1 provided that this section shall not affect rights and duties  
2 that matured, penalties that were incurred, and proceedings that  
3 were begun before the effective date of the person's licensure  
4 under chapter 454F, Hawaii Revised Statutes.

5 SECTION 32. There is appropriated out of the compliance  
6 resolution fund established pursuant to section 26-9(o), Hawaii  
7 Revised Statutes, the sum of \$894,077 or so much thereof as may  
8 be necessary for fiscal year 2010-2011 for all expenses,  
9 including the hiring in the division of financial institutions  
10 of one permanent working supervisor exempt from chapter 76,  
11 Hawaii Revised Statutes; three permanent examiners exempt from  
12 chapter 76, Hawaii Revised Statutes; three temporary examiners  
13 exempt from chapter 76, Hawaii Revised Statutes; and two  
14 permanent office assistants, one of whom may be paid out of the  
15 mortgage loan recovery fund established by section 454F-C, to  
16 establish and maintain the licensing regime created by chapter  
17 454F, Hawaii Revised Statutes.

18 The sum appropriated shall be expended by the division of  
19 financial institutions of the department of commerce and  
20 consumer affairs for the purposes of this Act.

21 SECTION 33. To timely implement the licensure requirements  
22 of chapter 454F, Hawaii Revised Statutes, the director of





1 commerce and consumer affairs, pursuant to the authority granted  
2 by section 78-27, Hawaii Revised Statutes, may execute  
3 agreements with the director of human resources development and  
4 the director of taxation to participate in a program of  
5 temporary exchange of employees that allows employees of the  
6 department of human resources development and the department of  
7 taxation to assist the division of financial institutions of the  
8 department of commerce and consumer affairs in processing  
9 applications for licensure under chapter 454F, Hawaii Revised  
10 Statutes. The director of human resources development and the  
11 director of taxation shall exercise their respective authority  
12 under section 78-27, Hawaii Revised Statutes, to participate  
13 fully and in good faith in agreements entered into pursuant to  
14 this section.

15 SECTION 34. This Act, including the repeal of chapter 454,  
16 Hawaii Revised Statutes, effectuated by section 27, does not  
17 affect rights and duties that matured, penalties that were  
18 incurred, and proceedings that were begun before its effective  
19 date.

20 SECTION 35. In codifying the new sections added by section  
21 3 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 36. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 37. This Act shall take effect on July 1, 2020;  
6 provided that sections 6, 7, 10, 25, and 27 shall take effect on  
7 July 1, 2020; and provided that section 30 shall take effect on  
8 July 1, 2020.



**Report Title:**

Secure and Fair Enforcement of Mortgage Licensing Act;  
Residential Mortgage; Appropriation

**Description:**

Makes amendments to the application, licensing, and regulatory requirements of the Secure and Fair Mortgage Licensing Act. Establishes the mortgage recovery fund to protect consumers injured by violations of chapter 454F, HRS. Includes mortgage loan originator companies in the regulatory system established by chapter 454F. Authorizes the commissioner of financial institutions to hire temporary and permanent staff to effectuate the purposes of chapter 454F, HRS. Effective July 1, 2020.  
(SB2603 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

