
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 legislature finds that the purpose of this
2 Act is to allow the State to continue to work towards meeting
3 its obligations under the federal Secure and Fair Enforcement
4 for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing
5 Act). The S.A.F.E. Mortgage Licensing Act requires states to
6 have a clear system of regulation that complies with the federal
7 law in place to regulate the residential mortgage industry or
8 face federal takeover of the intrastate residential real estate
9 industry. The legislature finds that it is in the best interest
10 of the State that licensing and regulation of the domestic
11 mortgage industry remain with the State and in compliance with
12 federal law. The legislature began the process of compliance
13 with the federal law by creating chapter 454F, Hawaii Revised
14 Statutes, through the passage of Act 32 in the First Special
15 Session of 2009. 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, underwriter or loan processor, as defined in chapter
18 454F.

19 (c) This section does not exempt an employee or an
20 independent contractor of a nondepository financial services
21 loan company who acts as a mortgage loan originator or a loan
22 processor or underwriter as defined in section 454F-1 for 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 seventeen 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 originates 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 not meet the criteria
21 for licensure.

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

2 (a) The commissioner shall establish and maintain a fund which
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 National Mortgage Licensing System, a licensee shall pay
14 to the division a mortgage loan recovery fund fee as follows for
15 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 National 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 pursuant to
14 chapter 91, adjust the fees generated by renewals or may
15 determine that payments made by renewing licensees shall cease.

16 If the funding level falls below \$250,000 after the first five
17 years, the commissioner may adjust the fees to a reasonable
18 level for the purpose of attaining a funding level of \$750,000.

19 (e) The commissioner or the commissioner's designee, as
20 the manager of the mortgage loan recovery fund, shall be
21 authorized to expend moneys in the mortgage loan recovery fund

22 to:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

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

14 **§454F-D Statute of limitation; recovery from fund.** (a)
15 No action for a judgment that subsequently results in an order
16 for collection from the mortgage loan recovery fund shall be
17 commenced later than six years from the accrual of the cause of
18 action. When any aggrieved person commences an action for a
19 judgment that may result in collection from the mortgage loan
20 recovery fund, the aggrieved person shall notify the
21 commissioner in writing at the time of the commencement of the
22 action and shall submit to the commissioner any documents

1 required by the commissioner pursuant to rules issued in
2 accordance with chapter 91.

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

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

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

17 (2) The person has complied with all the requirements of
18 this section;

19 (3) The person has obtained a judgment or settlement
20 pursuant to section 454F-C(a) that states the amount
21 of the judgment and the amount owed on the judgment
22 debt as of the date of the application;

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

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

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

19 (5) That where the licensee is a judgment debtor in a
20 bankruptcy proceeding, the aggrieved person has
21 obtained an order from the bankruptcy court declaring

1 the judgment against the licensee to be non-
2 dischargeable.

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

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

14 **§454F-E Management of fund.** (a) The sums received by the
15 division pursuant to section 454F-C for deposit into the
16 mortgage loan recovery fund shall be held by the commissioner or
17 the commissioner's designee to carry out the purpose of the
18 mortgage loan recovery fund. These funds may be invested and
19 reinvested in the same manner as funds of the state employees
20 retirement system.

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

1 authorized to expend moneys from the fund to retain private
2 legal counsel to represent the commissioner in any action
3 involving the mortgage loan recovery fund.

4 **§454F-F Standing.** The commissioner shall have standing to
5 intervene in and defend any action to recover from the mortgage
6 loan recovery fund including by entering an appearance, filing
7 an answer, appearing at court hearings, and taking any recourse
8 through appropriate methods of review. The commissioner or the
9 commissioner's legal representative shall be served with all
10 pleadings in any action pursuant to this section.

11 **§454F-G Subrogation of rights.** When, pursuant to court
12 order, the commissioner has paid any sum to a judgment creditor
13 from the mortgage recovery fund, the commissioner shall be
14 subrogated to all of the rights of the judgment creditor. The
15 judgment creditor shall assign all of the judgment creditor's
16 rights, title, and interest in the judgment to the commissioner.
17 Any interest collected by the commissioner pursuant to this
18 section shall be deposited into the mortgage recovery fund.

19 **§454F-H Waiver of rights.** The failure of an aggrieved
20 person to comply with sections 454F-C through 454F-G shall
21 constitute a waiver of the rights contained in those sections.

1 §454F-I Disciplinary action against licensee. No
2 provision of this chapter relating to the mortgage loan recovery
3 fund shall limit the authority of the commissioner to take
4 disciplinary action against any licensee for a violation of this
5 chapter or of the rules and orders of the commissioner adopted
6 pursuant to this chapter. Repayment of obligations to the
7 mortgage loan recovery fund by a licensee shall not nullify or
8 modify the effect of any other disciplinary proceeding brought
9 pursuant to this chapter.

10 §454F-J Authorized places of business; designation of
11 managers; branch offices. (a) Every mortgage loan originator
12 company licensed under this chapter shall have and maintain a
13 principal place of business in the State and shall designate a
14 manager.

15 (b) A mortgage loan originator company shall not maintain
16 any branch offices in the State in addition to its principal
17 place of business without the prior written approval of the
18 commissioner. An application to establish a branch office shall
19 be submitted with a nonrefundable application fee as required by
20 section 454F-N. A mortgage loan originator company that
21 established a branch office pursuant to this subsection shall

1 designate a manager located at each branch office to oversee
2 that branch office.

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

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

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

15 (2) Specify the reasons for the closing.

16 **§454F-K Reinstatement of expired licenses.** (a) A license
17 issued pursuant to this chapter that expires due to failure to
18 satisfy the minimum standards for renewal may be reinstated if
19 the licensee meets the following requirements:

20 (1) The license shall be reinstated between January 1 and
21 February 28 of the year immediately following the year
22 in which the license expired;

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

10 (3) The licensee shall pay all applicable licensing,
11 reinstatement, and late fees assessed by the
12 commissioner.

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

17 **§454F-L Presumption of control.** An individual is presumed
18 to control a mortgage loan originator company if that individual
19 is a director, general partner, managing director, or executive
20 officer of that mortgage loan originator company.

21 **§454F-M Payment of fees.** All fees collected pursuant to
22 section 454F-N, administrative fines, and other charges

1 collected pursuant to this chapter, except fees designated for
2 deposit into the mortgage loan recovery fund shall be deposited
3 into the compliance resolution fund established pursuant to
4 section 26-9(o) and shall be payable through the Nationwide
5 Mortgage Licensing System, to the extent allowed by the
6 Nationwide Mortgage Licensing System. Fees not eligible for
7 payment through the Nationwide Mortgage Licensing System shall
8 be payable to the division.

9 **§454F-N Mortgage loan originator and mortgage loan**

10 **originator company fees.** (a) A mortgage loan originator shall
11 pay the following fees to obtain and maintain a valid mortgage
12 loan originator license:

- 13 (1) Initial application fee of \$600;
14 (2) Annual license renewal fee of \$375;
15 (3) Reinstatement fee of \$100;
16 (4) Late fee of \$25 per day; and
17 (5) Criminal background check fee of \$35, or of an amount
18 determined by the commissioner by rule pursuant to
19 chapter 91.

20 (b) A mortgage loan originator company shall pay the
21 following fees to maintain a valid mortgage loan originator
22 company license or branch license:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

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

3 (A) Initial application fee of \$990;

4 (B) Annual license renewal fee of \$650;

5 (C) Reinstatement fee of \$100;

6 (D) Late fee of \$25 per day; and

7 (E) Criminal background check fee of \$35, or of an

8 amount determined by the commissioner by rule

9 pursuant to chapter 91, for each control person,

10 executive officer, director, general partner, and

11 manager; and

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

14 (A) Initial application fee of \$250;

15 (B) Annual license renewal fee of \$125;

16 (C) Reinstatement fee of \$100; and

17 (D) Late fee of \$25 per day.

18 (c) In addition to fees charged by the National Mortgage

19 Licensing System, a licensee shall pay to the commissioner a fee

20 of \$50 for each of the following amendments to information

21 provided to the National Mortgage Licensing System that require

22 the review of the commissioner:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

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

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

4 (3) Change of manager; or

5 (4) Change of legal name;

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

8 (d) The fees established by this section are
9 non-refundable and are in addition to any fees established and
10 charged by the Nationwide Mortgage Licensing System, an approved
11 educational course provider, an approved educational testing
12 provider, a law enforcement agency for fingerprints and
13 background checks, or by a credit reporting agency used by the
14 Nationwide Mortgage Licensing System.

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

18 **§454F-O Voluntary cessation of operation; surrender of**
19 **license.** (a) Subject to the approval of the commissioner, a
20 licensee may voluntarily cease activity for which a license to
21 operate has been issued under this chapter by delivering to the

1 commissioner a written notice of surrender, which shall include,
2 but not be limited to:

- 3 (1) A plan of cessation of business;
4 (2) Provisions for the transfer or assumption of assets;
5 (3) Provisions for pending applications or transactions;
6 (4) Provisions for payment or assumption of liabilities;
7 (5) Provisions for the disposition of individual mortgage
8 loan originator licenses, and
9 (6) Provisions for transfer or assumption of all trust,
10 agency, and other fiduciary relationships and
11 accounts.

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

- 13 (1) The commissioner is satisfied with the plan as set
14 forth by the licensee; and
15 (2) No other reason exists to deny the request for
16 surrender;

17 provided that the commissioner may impose any restrictions and
18 conditions as the commissioner deems appropriate.

19 (c) The surrender shall not affect rights and duties that
20 have matured, penalties that were incurred, and proceedings that
21 were begun before the effective date of the surrender of a
22 license under this section.

1 §454F-P Change in control of a licensee; fees. (a) A
2 licensee shall submit to the commissioner an application
3 requesting approval of a proposed change of control of the
4 licensee, accompanied by a nonrefundable application fee of
5 \$500, payable to the division.

6 (b) The commissioner shall approve a request for change of
7 control under subsection (a) if, after investigation, the
8 commissioner determines that the person or group of persons
9 requesting approval has the competence, experience, character,
10 and general fitness to control the licensee or person in control
11 of the licensee in a lawful and proper manner, and that the
12 interests of the public will not be jeopardized by the change of
13 control."

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

16 "(a) No department of the State other than the attorney
17 general may employ or retain any attorney, by contract or
18 otherwise, for the purpose of representing the State or the
19 department in any litigation, rendering legal counsel to the
20 department, or drafting legal documents for the department;
21 provided that the foregoing provision shall not apply to the
22 employment or retention of attorneys:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

- 1 (1) By the public utilities commission, the labor and
2 industrial relations appeals board, and the Hawaii
3 labor relations board;
- 4 (2) By any court or judicial or legislative office of the
5 State; provided that if the attorney general is
6 requested to provide representation to a court or
7 judicial office by the chief justice or the chief
8 justice's designee, or to a legislative office by the
9 speaker of the house of representatives and the
10 president of the senate jointly, and the attorney
11 general declines to provide such representation on the
12 grounds of conflict of interest, the attorney general
13 shall retain an attorney for the court, judicial, or
14 legislative office, subject to approval by the court,
15 judicial, or legislative office;
- 16 (3) By the legislative reference bureau;
- 17 (4) By any compilation commission that may be constituted
18 from time to time;
- 19 (5) By the real estate commission for any action involving
20 the real estate recovery fund;
- 21 (6) By the contractors license board for any action
22 involving the contractors recovery fund;

- 1 (7) By the trustees for any action involving the travel
2 agency recovery fund;
- 3 (8) By the office of Hawaiian affairs;
- 4 (9) By the department of commerce and consumer affairs for
5 the enforcement of violations of chapters 480 and
6 485A;
- 7 (10) As grand jury counsel;
- 8 (11) By the Hawaiian home lands trust individual claims
9 review panel;
- 10 (12) By the Hawaii health systems corporation, or its
11 regional system boards, or any of their facilities;
- 12 (13) By the auditor;
- 13 (14) By the office of ombudsman;
- 14 (15) By the insurance division;
- 15 (16) By the University of Hawaii;
- 16 (17) By the Kahoolawe island reserve commission;
- 17 (18) By the division of consumer advocacy;
- 18 (19) By the office of elections;
- 19 (20) By the campaign spending commission;
- 20 (21) By the Hawaii tourism authority, as provided in
21 section 201B-2.5; [~~or~~]

1 (22) By the division of financial institutions for any
2 action involving the mortgage loan recovery fund; or
3 [~~+22~~] (23) By a department, in the event the attorney
4 general, for reasons deemed by the attorney general to
5 be good and sufficient, declines to employ or retain
6 an attorney for a department; provided that the
7 governor thereupon waives the provision of this
8 section."

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

11 " (b) As used in this section:

12 "Activities relating to the general servicing of
13 [~~fiduciary/custodial~~] fiduciary or custodial accounts" means
14 those activities performed by trust companies which are directly
15 or indirectly performed within the [~~fiduciary/custodial~~]
16 fiduciary or custodial relationship between the trust company or
17 trust department of a financial institution and its client and
18 which are not offered to any person outside of the
19 [~~fiduciary/custodial~~] fiduciary or custodial relationship.

20 "Annual percentage rate" and "finance charge" have the same
21 meaning as defined in the federal Truth in Lending Act (15
22 U.S.C. sections 1605(a) to (c) and 1606).

1 "Deposit" means:

2 (1) Money or its equivalent received or held by a
3 financial institution in the usual course of business
4 and for which it has given or is obligated to give
5 credit to:

6 (A) A commercial (including public deposits),
7 checking, savings, time, or thrift account;

8 (B) A check or draft drawn against a deposit account
9 and certified by the financial institution;

10 (C) A letter of credit; or

11 (D) A traveler's check, on which the financial
12 institution is primarily liable;

13 (2) Trust funds received or held by a financial
14 institution, whether held in the trust department or
15 held or deposited in any other department of the
16 financial institution;

17 (3) Money received or held by a financial institution, or
18 the credit given for money or its equivalent received
19 or held by a financial institution in the usual course
20 of business for a special or specific purpose,
21 regardless of the legal relationship thereby
22 established, including, without being limited to,

1 escrow funds, funds held as security for an obligation
2 due the financial institution or others (including
3 funds held as dealers' reserves) or for securities
4 loaned by the financial institution, funds deposited
5 by a debtor to meet maturing obligations, funds
6 deposited as advance payment on subscriptions to
7 United States government securities, funds held for
8 distribution or purchase of securities, funds held to
9 meet the financial institution's acceptances or
10 letters of credit, and withheld taxes;

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

14 (5) Money or its equivalent held as a credit balance by a
15 financial institution on behalf of its customer if the
16 financial institution is engaged in soliciting and
17 holding the balances in the regular course of its
18 business.

19 "Financial institution" means banks, building and loan
20 associations, development companies, financial corporations,
21 financial services loan companies, small business investment
22 companies, financial holding companies, mortgage loan originator

1 companies~~[7]~~ as defined in chapter 454F, and trust companies all
2 as defined in chapter 241.

3 "Leasing of personal property" occurs if:

4 (1) The lease is to serve as the functional equivalent of
5 an extension of credit to the lessee of the property;

6 (2) The property to be leased is acquired specifically for
7 the leasing transaction under consideration, or was
8 acquired specifically for an earlier leasing
9 transaction;

10 (3) The lease is on a nonoperating basis~~[7-i.e.7]~~ where
11 the financial institution may not, directly or
12 indirectly:

13 (A) Provide for the maintenance, repair, replacement,
14 or servicing of the leased property during the
15 lease term;

16 (B) Purchase parts and accessories in bulk or for an
17 individual property after the lessee has taken
18 delivery of the property; or

19 (C) Purchase insurance for the lessee;

20 (4) At the inception of the lease the effect of the
21 transaction will yield a return that will compensate
22 the lessor financial institution for not less than the

1 lessor's full investment in the property plus the
2 estimated total cost of financing the property over
3 the term of the lease, from:

4 (A) Rentals;

5 (B) Estimated tax benefits [~~+~~] including capital
6 goods excise tax credit, net economic gain from
7 tax deferral from accelerated depreciation, and
8 other tax benefits with a substantially similar
9 effect[~~+~~]; and

10 (C) The estimated residual value of the property at
11 the expiration of the initial term of the lease;

12 (5) The maximum lease term during which the lessor
13 financial institution [~~must~~] shall recover the
14 lessor's full investment in the property, plus the
15 estimated total cost of financing the property, shall
16 be forty years; and

17 (6) At the expiration of the lease, [~~+~~]including any
18 renewals or extensions with the same lessee[~~+~~], all
19 interest in the property shall be either liquidated or
20 leased again on a nonoperating basis as soon as
21 practicable [~~+~~] but in no event later than two years
22 from the expiration of the lease[~~+~~, ~~but~~]; provided

1 that in no case shall the lessor retain any interest
2 in the property beyond fifty years after the lessor's
3 acquisition of the property."

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

7 ""Mortgage loan originator company" [~~means any company~~
8 ~~licensed under chapter 454.~~] has the same meaning as in section
9 454F-1."

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

12 "**§412:3-502 Foreign financial institution.** No foreign
13 financial institution shall receive deposits, lend money, or pay
14 checks, negotiate orders of withdrawal or share drafts from any
15 principal office, branch, agency, automatic teller machine, or
16 other location in this State, unless expressly authorized by
17 this chapter, other laws of this State, or federal law; provided
18 that nothing in this section shall prohibit any foreign
19 financial institution from participating in the disbursement of
20 cash through an automatic teller machine network or from
21 operating from any location in this State as a [~~mortgage broker~~
22 ~~licensed under chapter 454, loan originator licensed~~] licensee

1 under chapter 454F, or as a real estate collection servicing
2 agent."

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

5 1. By adding twelve new definitions to be appropriately
6 inserted and to read:

7 "Borrower" means a person who has applied for or obtained
8 a residential mortgage loan from or through a licensed mortgage
9 loan originator or mortgage loan originator company or from a
10 person required to be licensed as a mortgage loan originator or
11 mortgage loan originator company under this chapter.

12 "Branch office" means any location, separate from the
13 principal place of business of the mortgage loan originator
14 company that is identified by any means to the public or
15 customers as a location at which the licensee holds itself out
16 as a mortgage loan originator company.

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

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

1 "Division" means the division of financial institutions of
2 the department of commerce and consumer affairs.

3 "Employee" means an individual who is:

4 (1) Hired to provide services for a licensee on a regular
5 basis in exchange for compensation and who does not
6 provide these services as part of the individual's
7 independent business;

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

11 (3) Subject to the right of the licensee to direct and
12 control the actions of the individual.

13 "Exempt registered mortgage loan originator company" means
14 any person, including an insured depository institution, who is
15 required to be licensed by any other state or federal law but is
16 not required to be licensed under this chapter, and has the
17 obligation to register with the Nationwide Mortgage Licensing
18 System because one or more of the person's employees engage in
19 the business of a mortgage loan originator.

20 "Independent contractor" means any person who has a
21 contractual arrangement to perform mortgage loan originating,

1 underwriting, or loan processing services to a licensee, but is
2 not an employee of a licensee.

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

4 "Licensee" means a mortgage loan originator, a mortgage
5 loan originator company, or a person who is required to be
6 licensed under this chapter. Licensee does not include an
7 exempt registered mortgage loan originator or exempt registered
8 mortgage loan originator company as defined by this section.

9 "Mortgage loan originator company" means:

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

13 (2) A person not exempt under section 454F-2 who employs
14 or utilizes the exclusive services of one or more
15 mortgage loan originators licensed or required to be
16 licensed under this chapter.

17 "Taking a residential mortgage loan application" means
18 receipt of a request or of a response to a solicitation of an
19 offer from a borrower, either directly or indirectly, for the
20 purpose of deciding whether or not to extend an offer of a loan
21 to the borrower. Taking a residential mortgage loan application

1 does not include mere physical handling or transmission of a
2 form."

3 2. By amending the definitions of "advertisement" or
4 "advertising", "applicant", "insured depository institution",
5 "loan processor or underwriter", "mortgage loan originator",
6 "Nationwide Mortgage Licensing System", "registered mortgage
7 loan originator", and "residential mortgage loan" to read:

8 "Advertisement" or "advertising" means:

- 9 (1) Issuing any card, sign, or device to any person;
- 10 (2) Causing, permitting, or allowing the placement of any
11 sign or marking on or in any building, vehicle, or
12 structure;
- 13 (3) Placing an advertisement in any newspaper, magazine,
14 or on the Internet;
- 15 (4) Listing or advertising in any directory under a
16 classification or heading that includes the words
17 "mortgage loan originator", "mortgage loan originator
18 company", or the like;
- 19 (5) Broadcasting commercials by airwave or internet
20 transmission; or
- 21 (6) Transmitting any written communication, including:

1 (A) A letter or a postcard that encourages a person
2 to borrow from or through a mortgage loan
3 originator~~[+]~~ or a mortgage loan originator
4 company; or

5 (B) A written communication that encourages a person
6 to refinance the person's existing residential
7 mortgage loan and mentions that a new residential
8 mortgage loan will reduce the monthly payment the
9 borrower will pay on the new residential mortgage
10 loan or reduce the interest rate on the
11 borrower's existing residential mortgage loan.

12 "Applicant" means ~~[an individual]~~ a person applying for the
13 issuance of a license or a renewal of a license under this
14 chapter.

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

19 "Loan processor or underwriter" means an individual who
20 performs clerical or support duties as an employee at the
21 direction of and subject to the supervision and instruction of a
22 ~~[mortgage loan originator or a]~~ person ~~[who is]~~ licensed or

1 exempt from licensing [~~as a mortgage loan originator~~] under this
2 chapter.

3 "Mortgage loan originator" means an individual who for
4 compensation or gain or in the expectation of compensation or
5 gain:

- 6 (1) Takes a residential mortgage loan application; or
7 (2) Offers or negotiates terms of a residential mortgage
8 loan.

9 A mortgage loan originator includes an independent
10 contractor as provided in section 454F-3.

11 "Nationwide Mortgage Licensing System" means a mortgage
12 licensing system developed and maintained by the Conference of
13 State Bank Supervisors and the American Association of
14 Residential Mortgage Regulators for the licensing and
15 registration of [~~licensed~~] mortgage loan originators[~~;~~],
16 mortgage loan originator companies, exempt registered mortgage
17 loan originators, and exempt registered mortgage loan originator
18 companies as defined by this chapter.

19 [~~Registered~~] "Exempt registered mortgage loan originator"
20 means any individual who:

- 21 (1) Meets the definition of mortgage loan originator and
22 is an employee of:

- 1 (A) An insured depository institution;
- 2 (B) A subsidiary that is:
- 3 (i) Owned and controlled by an insured
- 4 depository institution; and
- 5 (ii) Regulated by a federal banking agency; or
- 6 (C) An institution regulated by the Farm Credit
- 7 Administration; and
- 8 (2) Is registered with, and maintains a unique identifier
- 9 through, the Nationwide Mortgage Licensing System [~~and~~
- 10 ~~Registry.~~] but is not required to be licensed under
- 11 this chapter.

12 "Residential mortgage loan" means any loan primarily for

13 personal, family, or household use that is secured by a

14 mortgage, deed of trust, or other equivalent consensual security

15 interest on a dwelling as defined in [~~Section~~] section 103(v) of

16 the Truth in Lending Act, 15 United States Code [~~Section 1601 et~~

17 ~~seq.~~] section 1602 or residential real estate."

18 SECTION 9. Section 454F-2, Hawaii Revised Statutes, is

19 amended to read as follows:

20 "[~~§~~454F-2[~~§~~] **Exemptions.** This chapter shall not apply

21 to the following:

- 1 (1) [A] An exempt registered mortgage loan originator,
2 when acting for an insured depository institution, a
3 subsidiary of an insured depository institution
4 regulated by a federal banking agency, or an
5 institution regulated by the Farm Credit
6 Administration;
- 7 (2) Any individual who offers or negotiates terms of a
8 residential mortgage loan with, or on behalf of, an
9 immediate family member of the individual;
- 10 (3) Any individual who offers or negotiates terms of a
11 residential mortgage loan secured by a dwelling that
12 served as the individual's residence;
- 13 (4) A licensed attorney who negotiates the terms of a
14 residential mortgage loan on behalf of a client as an
15 ancillary matter to the attorney's representation of
16 the client unless the attorney is compensated by a
17 lender, a mortgage [~~broker,~~] loan originator company,
18 or other mortgage loan originator or by an agent of a
19 lender, mortgage [~~broker,~~] loan originator company, or
20 other mortgage loan originator;
- 21 [~~(5) An individual engaging solely in loan processor or~~
22 ~~underwriter activities; provided that an individual,~~

1 ~~including an independent contractor, who performs the~~
2 ~~services of a loan processor or underwriter shall not~~
3 ~~represent to the public, through advertising or other~~
4 ~~means of communicating or providing information,~~
5 ~~including the use of business cards, stationery,~~
6 ~~brochures, signs, rate lists, or other promotional~~
7 ~~items, that the individual can or will perform any of~~
8 ~~the activities of a mortgage loan originator, and any~~
9 ~~loan processor or underwriter, including an~~
10 ~~independent contractor, who advertises that the~~
11 ~~individual can or will perform any of the activities~~
12 ~~of a mortgage loan originator or engages in the~~
13 ~~activities of a mortgage loan originator shall not be~~
14 ~~exempt under this chapter and shall obtain and~~
15 ~~maintain a license under this chapter and a valid~~
16 ~~unique identifier issued by the Nationwide Mortgage~~
17 ~~Licensing System;~~

18 ~~(6)]~~ (5) A person or entity that only performs real estate
19 brokerage activities and is licensed or registered by
20 the State unless the person or entity is compensated
21 by a lender, a mortgage ~~[broker,]~~ loan originator
22 company, or other mortgage loan originator or by an

1 agent of the lender, mortgage [~~broker,~~] loan
 2 originator company, or other mortgage loan originator;
 3 [~~or~~]

4 [~~(7)~~] (6) A person or entity solely involved in extensions
 5 of credit relating to timeshare plans, as the term is
 6 defined in [~~Section~~] section 101(53D) of Title 11,
 7 United States Code[~~;~~];

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

10 (8) An insured depository institution."

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

13 "~~[§]~~**§454F-3**~~[§]~~ **Requirement of licensure.** (a) Effective
 14 [~~August 1, 2010,~~] January 1, 2011, or such later date approved
 15 by the United States Department of Housing and Urban Development
 16 pursuant to the authority granted under Public Law 110-289,
 17 Section 1508(e), [~~an individual,~~] 15 United States Code section
 18 5107, a person, unless specifically exempted from this chapter,
 19 shall not engage in the business of a mortgage loan originator
 20 or mortgage loan originator company with respect to any dwelling
 21 located in this State without first obtaining and maintaining
 22 annually, a license under this chapter. Each licensed mortgage

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

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

16 (c) A loan processor or underwriter who does not represent
17 to the public, through advertising or other means of
18 communicating or providing information, including through
19 business cards, stationery, brochures, signs, rate lists, or
20 other promotional items, that the individual can or will perform
21 any of the activities of a mortgage loan originator, who does
22 not advertise that the individual can or will perform any of the

1 activities of a mortgage loan originator, and who does not
2 engage in the activities of a mortgage loan originator shall not
3 be required to be licensed under this chapter."

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

6 "[~~f~~]**\$454F-4**[~~}]~~ **License and registration; application;**
7 **issuance.** (a) Applicants for a license shall apply in a form
8 as prescribed by the Nationwide Mortgage Licensing System or by
9 the commissioner.

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

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

1 (d) In connection with an application for [~~licensing as a~~
2 ~~mortgage loan originator,~~] a license under this chapter, the
3 applicant, at a minimum, shall furnish to the commissioner and
4 to the Nationwide Mortgage Licensing System information
5 concerning the applicant's identity, including:

- 6 (1) Fingerprints of the applicant and, in the case of an
7 applicant that is not an individual, each of the
8 applicant's control persons, executive officers,
9 directors, general partners, and managing members for
10 submission to the Federal Bureau of Investigation, and
11 any governmental agency or entity authorized to
12 receive the fingerprints for a state, national, and
13 international criminal history background check; and
- 14 (2) Personal history and experience of the applicant and,
15 in the case of an applicant that is not an individual,
16 each of the applicant's control persons, executive
17 officers, directors, general partners, and managing
18 members in a form prescribed by the Nationwide
19 Mortgage Licensing System including the submission of
20 authorization for the Nationwide Mortgage Licensing
21 System and the commissioner to obtain:

1 (A) An independent credit report obtained from a
2 consumer reporting agency described in Section
3 603(p) of the Fair Credit Reporting Act, 15
4 United States Code 1681 et seq.; and

5 (B) Information related to any administrative, civil,
6 or criminal findings by any governmental
7 jurisdiction.

8 (e) The commissioner may use the Nationwide Mortgage
9 Licensing System as an agent for requesting information from and
10 distributing information to the Department of Justice or any
11 governmental agency.

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

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

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

SB2603 SD1.DOC
SB2603 SD1.DOC
SB2603 SD1.DOC

1 "~~§454F-5~~ **Issuance of license.** (a) The commissioner
2 shall not issue a ~~[mortgage loan originator]~~ license pursuant to
3 this chapter unless the commissioner makes at a minimum the
4 following findings:

5 (1) The applicant, or in the case of an applicant that is
6 not an individual, each of the applicant's control
7 persons, executive officers, directors, general
8 partners, and managing members, has never had a
9 mortgage loan originator or a mortgage loan originator
10 company license revoked in any jurisdiction; provided
11 that a subsequent formal vacation of a revocation
12 shall not be deemed a revocation;

13 (2) The applicant, or in the case of an applicant that is
14 not an individual, each of the applicant's control
15 persons, executive officers, directors, general
16 partners, and managing members, has not been convicted
17 of, or pled guilty or nolo contendere, or been granted
18 a deferred acceptance of a guilty plea under chapter
19 853 to a felony in a domestic, foreign, or military
20 court:

1 (A) During the seven-year period preceding the date
2 of the application for licensing and
3 registration; or
4 (B) At any time preceding the date of application, if
5 the felony involved an act of fraud, dishonesty,
6 breach of trust, or money laundering;
7 provided that any pardon of a conviction shall not be
8 deemed a conviction for purposes of this section;
9 (3) The applicant, 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 demonstrated
13 financial responsibility, character, and general
14 fitness to command the confidence of the community and
15 to warrant a determination that the [~~mortgage loan~~
16 ~~originator~~] applicant shall operate honestly, fairly,
17 and efficiently pursuant to this chapter. For
18 purposes of this [~~paragraph,~~] section, a person is not
19 financially responsible when the person has shown a
20 disregard in the management of the person's financial
21 condition. A determination that [~~an individual~~] a

1 person has not shown financial responsibility may be
2 based on:

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

5 (B) Current outstanding tax liens or other government
6 liens and filings;

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

8 (D) A pattern of seriously delinquent accounts within
9 the past three years;

10 (4) The applicant, or in the case of an applicant that is
11 not an individual, each of the applicant's control
12 persons, executive officers, directors, general
13 partners, and managing members, has not been convicted
14 of any misdemeanor involving an act of fraud,
15 dishonesty, breach of trust, or money laundering;

16 ~~(4)~~ (5) 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 completed the pre-licensing education requirement
22 described in section 454F-6;

1 ~~[(5)]~~ (6) The applicant, or in the case of an applicant
2 that is not an individual, each individual mortgage
3 loan originator who is employed by the mortgage loan
4 originator company or who provides exclusive services
5 to the applicant as a mortgage loan originator, has
6 passed a written test that meets the test requirements
7 in section 454F-7; and

8 ~~[(6)]~~ (7) The applicant has met the ~~[surety bond]~~ mortgage
9 recovery fund requirement as required in section
10 454F-C.

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

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

SB2603 SD1.DOC
SB2603 SD1.DOC
SB2603 SD1.DOC

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

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

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

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

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

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

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

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

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

20 "(a) In order to meet the passing of the written test
21 requirement in section 454F-5, an applicant for licensure as a
22 mortgage loan originator shall pass, in accordance with the

1 standards established under this section, a qualified written
2 test developed by the Nationwide Mortgage Licensing System and
3 administered by a test provider approved by the Nationwide
4 Mortgage Licensing System based upon reasonable standards."

5 2. By amending subsection (d) to read:

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

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

20 "[+]§454F-8[+] **Standards for license renewal.** (a) The
21 minimum standards for license renewal for mortgage loan
22 originators shall include the following:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

- 1 (1) The mortgage loan originator continues to meet the
2 minimum standards for licensure under section 454F-5;
- 3 (2) The mortgage loan originator has satisfied the annual
4 continuing education requirements in section 454F-9;
5 and
- 6 (3) The mortgage loan originator has paid all required
7 fees for renewal of the license.
- 8 (b) The minimum standards for license renewal for mortgage
9 loan originator companies shall include the following:
- 10 (1) The mortgage loan originator company continues to meet
11 the minimum standards for licensure established
12 pursuant to section 454F-5;
- 13 (2) The mortgage loan originator company's qualified
14 manager has satisfied the minimum standards for
15 license renewal; and
- 16 (3) The mortgage loan originator company has paid all
17 required fees for renewal of the license.
- 18 [~~(b)~~] (c) The license of a mortgage loan originator [who]
19 or mortgage loan originator company that fails to satisfy the
20 minimum standards for license renewal shall expire. The
21 commissioner may adopt procedures for the reinstatement of
22 expired licenses consistent with section 454F-K and the
- SB2603 SD1.DOC
SB2603 SD1.DOC
SB2603 SD1.DOC

1 standards established by the Nationwide Mortgage Licensing
2 System."

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

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

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

9 (e) A licensed mortgage loan originator:

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

14 (2) May not take the same approved course in the same or
15 successive years to meet the annual requirements for
16 continuing education[~~-~~]; provided that the term
17 "successive years" shall mean the two years following
18 the year in which a mortgage loan originator takes an
19 approved course."

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

21 "(i) [~~A person~~] The license of a licensee meeting the
22 requirements of section 454F-8(a)(1) and (3) [~~may make up any~~

1 ~~deficiency in continuing education as established by rule~~
2 ~~adopted by the commissioner]~~ shall expire if the licensee fails
3 to meet the minimum requirements for continuing education.
4 Reinstatement of the expired license shall be allowed as
5 provided for in section 454F-K."

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

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

- 17 (1) Background checks of:
- 18 (A) Criminal history through fingerprint or other
19 databases;
- 20 (B) Civil or administrative records;
- 21 (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 ensure the effective supervision
3 and enforcement of this chapter, the commissioner may, pursuant
4 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) In accordance with 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 finest 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~~{}~~ but not limited to:

- 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[+] but not limited to:

- 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~~] In order to carry out the purposes of this
22 chapter, the commissioner may:

SB2603 SD1.DOC

SB2603 SD1.DOC

SB2603 SD1.DOC

- 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; 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, or claims
10 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 "~~[f]~~**\$454F-16**~~[f]~~ **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 recovery fund
4 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[~~-~~]; and

1 (11) Hire and employ three permanent examiners and one
2 permanent working supervisor, all of which positions
3 shall be exempt from chapter 76, two permanent office
4 assistants, one of whom may be paid out of the
5 mortgage recovery fund, and three temporary examiners
6 exempt from chapter 76 to implement this chapter."

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

9 "~~{}~~**\$454F-19**~~{}~~ **Unique identifier shown.** The unique
10 identifier of any person originating a residential mortgage
11 loan, except a person that is exempt from this chapter, shall be
12 clearly shown on all residential mortgage loan application
13 forms, solicitations, or advertisements, including business
14 cards or websites, and any other documents as established by
15 rule or order of the commissioner."

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

19 "**Creditor**" means any bank; savings and loan association;
20 trust company; financial services loan company; credit union;
21 ~~[mortgage banker, broker, or solicitor;]~~ mortgage loan
22 originator; mortgage loan originator company; pawnbroker; mutual

1 benefit society or fraternal benefit society; debt adjuster; the
2 issuer of a credit card as defined in section 708-800; any
3 person who initiates, extends, renews, or continues loans of
4 money or credit; any person who regularly arranges for the
5 initiation, extension, renewal, or continuation of a loan of
6 money or credit; or any assignee of an original creditor who
7 participates in the decision to grant, extend, renew, or to
8 continue [~~such~~] a loan or credit."

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

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

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

15 (2) The department of health on prospective employees,
16 persons seeking to serve as providers, or
17 subcontractors in positions that place them in direct
18 contact with clients when providing non-witnessed
19 direct mental health services as provided by section
20 321-171.5;

21 (3) The department of health on all applicants for
22 licensure for, operators for, [~~and~~] prospective

1 employees, and volunteers at one or more of the
2 following: skilled nursing facility, intermediate
3 care facility, adult residential care home, expanded
4 adult residential care home, assisted living facility,
5 home health agency, hospice, adult day health center,
6 special treatment facility, therapeutic living
7 program, intermediate care facility for the mentally
8 retarded, hospital, rural health center and
9 rehabilitation agency, and, in the case of any of the
10 [~~above-related~~] above facilities operating in a
11 private residence, on any adult living in the facility
12 other than the client as provided by section 321-15.2;

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

17 (5) The counties on employees and prospective employees
18 who may be in positions that place them in close
19 proximity to children in recreation or child care
20 programs and services;

21 (6) The county liquor commissions on applicants for liquor
22 licenses as provided by section 281-53.5;

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

- 1 (12) The department of human services on staff members of
2 the Hawaii youth correctional facility as provided by
3 section 352-5.5;
- 4 (13) The department of human services on employees,
5 prospective employees, and volunteers of contracted
6 providers and subcontractors in positions that place
7 them in close proximity to youth when providing
8 services on behalf of the office or the Hawaii youth
9 correctional facility as provided by section 352D-4.3;
- 10 (14) The judiciary on employees and applicants at detention
11 and shelter facilities as provided by section 571-34;
- 12 (15) The department of public safety on employees and
13 prospective employees who are directly involved with
14 the treatment and care of persons committed to a
15 correctional facility or who possess police powers
16 including the power of arrest as provided by section
17 353C-5;
- 18 (16) The department of commerce and consumer affairs on
19 applicants for private detective or private guard
20 licensure as provided by section 463-9;
- 21 (17) Private schools and designated organizations on
22 employees and prospective employees who may be in

1 positions that necessitate close proximity to
2 children; provided that private schools and designated
3 organizations receive only indications of the states
4 from which the national criminal history record
5 information was provided pursuant to section 302C-1;

6 (18) The public library system on employees and prospective
7 employees whose positions place them in close
8 proximity to children as provided by section
9 302A-601.5;

10 (19) The State or any of its branches, political
11 subdivisions, or agencies on applicants and employees
12 holding a position that has the same type of contact
13 with children, vulnerable adults, or persons committed
14 to a correctional facility as other public employees
15 who hold positions that are authorized by law to
16 require criminal history record checks as a condition
17 of employment as provided by section 78-2.7;

18 (20) The department of human services on licensed adult day
19 care center operators, employees, new employees,
20 subcontracted service providers and their employees,
21 and adult volunteers as provided by section 346-97;

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

- 1 company, and depository financial services loan
2 company as provided by section 412:3-201;
- 3 (25) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a
5 nondepository financial services loan company as
6 provided by section 412:3-301;
- 7 (26) The department of commerce and consumer affairs on the
8 original chartering applicants and proposed executive
9 officers of a credit union as provided by section
10 412:10-103;
- 11 (27) The department of commerce and consumer affairs on:
12 (A) Each principal of every non-corporate applicant
13 for a money transmitter license; and
14 (B) The executive officers, key shareholders, and
15 managers in charge of a money transmitter's
16 activities of every corporate applicant for a
17 money transmitter license,
18 as provided by section 489D-9;
- 19 (28) The department of commerce and consumer affairs on
20 applicants for licensure and persons licensed under
21 title 24;
- 22 (29) The Hawaii health systems corporation on:

- 1 (A) Employees;
- 2 (B) Applicants seeking employment;
- 3 (C) Current or prospective members of the corporation
- 4 board or regional system board; or
- 5 (D) Current or prospective volunteers, providers, or
- 6 contractors,
- 7 in any of the corporation's health facilities as
- 8 provided by section 323F-5.5;

9 [†] (30) [†] The department of commerce and consumer affairs on
 10 [~~an~~]:

- 11 (A) An applicant for a mortgage loan [originator's]
- 12 originator license [as provided by chapter 454F];
- 13 and
- 14 (B) Each control person, executive officer, director,
- 15 general partner, and manager of an applicant for
- 16 a mortgage loan originator company license,
- 17 as provided by chapter 454F; and

18 [†] (31) [†] Any other organization, entity, or the State, its
 19 branches, political subdivisions, or agencies as may
 20 be authorized by state law."

21 SECTION 27. Chapter 454, Hawaii Revised Statutes, is
 22 repealed.

1 SECTION 28. Section 454F-13, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~[S454F-13] Surety bond; required.~~ (a) Each mortgage~~
4 ~~loan originator shall be covered by a surety bond in accordance~~
5 ~~with this section. In the event that the mortgage loan~~
6 ~~originator is an employee or exclusive agent of a person subject~~
7 ~~to this chapter, the surety bond of the person may be used in~~
8 ~~lieu of the mortgage loan originator's surety bond.~~

9 ~~(b) The surety bond shall provide coverage for each~~
10 ~~mortgage loan originator in an amount prescribed in subsection~~
11 ~~(c). The surety bond shall be in a form as prescribed by the~~
12 ~~commissioner. The commissioner may adopt rules pursuant to~~
13 ~~chapter 91 with respect to the requirements for the surety bonds~~
14 ~~necessary to accomplish the purposes of this chapter.~~

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

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

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

1 SECTION 29. Section 454F-21, Hawaii Revised Statutes, is
2 repealed.

3 ~~["**[S454F-21] Fees and costs.** (a) Each application for a~~
4 ~~mortgage loan originator license shall be accompanied by an~~
5 ~~application fee of \$250, or an amount as the commissioner shall~~
6 ~~establish by rule pursuant to chapter 91.~~

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

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

15 SECTION 30. Act 32, Session Laws of Hawaii 2009, is
16 amended as follows:

17 1. By amending section 8 to read:

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

19 (1) No new license shall be issued and no license renewal
20 shall be effected under chapter 454, Hawaii Revised
21 Statutes; and

1 (2) An individual who is subject to this Act shall be
2 required to be licensed under chapter 454F, Hawaii
3 Revised Statutes, or by such later date approved by
4 the United States Department of Housing and Urban
5 Development, pursuant to the authority granted under
6 Public Law 110 289, section 1508(e). [~~As of the date~~
7 ~~that an individual is required to be licensed under~~
8 ~~chapter , Hawaii Revised Statutes, the remaining pro~~
9 ~~rata balance of the fees paid by the individual under~~
10 ~~chapter 454, Hawaii Revised Statutes, shall be applied~~
11 ~~to the individual's fees due under chapter , Hawaii~~
12 ~~Revised Statutes, until exhausted.]~~

13 2. By amending section 11 to read:

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

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

3 SECTION 31. A person licensed under chapter 454F, Hawaii
4 Revised Statutes, shall not be required to be licensed under
5 chapter 454, Hawaii Revised Statutes, and shall not be subject
6 to the provisions of that chapter upon the effective date of the
7 person's licensure under chapter 454F, Hawaii Revised Statutes;
8 provided that this section shall not affect rights and duties
9 that matured, penalties that were incurred, and proceedings that
10 were begun before the effective date of the person's licensure
11 under chapter 454F, Hawaii Revised Statutes.

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

1 establish and maintain the licensing regime created by chapter
2 454F, Hawaii Revised Statutes.

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

6 SECTION 33. The director of commerce and consumer affairs,
7 pursuant to the authority granted by section 78-27, Hawaii
8 Revised Statutes, shall execute agreements with the director of
9 human resource development and the director of taxation to
10 participate in a program of temporary exchange of employees that
11 allows employees of the department of human resource development
12 and the department of taxation to assist the division of
13 financial institutions of the department of commerce and
14 consumer affairs in processing applications for licensure under
15 chapter 454F, Hawaii Revised Statutes, in order to timely
16 implement the licensure requirements of chapter 454F, Hawaii
17 Revised Statutes. The director of human resource development
18 and the director of taxation shall exercise their respective
19 authority under section 78-27, Hawaii Revised Statutes, to
20 participate fully and in good faith in agreements entered into
21 pursuant to this section.

1 SECTION 34. This Act, including the repeal of chapter 454,
2 Hawaii Revised Statutes, effectuated by section 27, does not
3 affect rights and duties that matured, penalties that were
4 incurred, and proceedings that were begun before its effective
5 date.

6 SECTION 35. In codifying the new sections added by section
7 3 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 36. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 37. This Act shall take effect on July 1, 2010;
13 provided that sections 5, 6, 7, 25, and 27 shall take effect on
14 January 1, 2011; and provided that section 30 shall take effect
15 upon approval of this Act.

16

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. (SD1)

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