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# A BILL FOR AN ACT

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

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

1           SECTION 1. The 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 out of the hands of  
12 the federal government. The legislature began the process of  
13 compliance with the federal law by creating chapter 454F, Hawaii  
14 Revised Statutes, through the passage of Act 32 in the First  
15 Special Session of 2009. The legislature finds that Act 32 was  
16 a necessary step in meeting the mandates of the S.A.F.E.



1 Mortgage Licensing Act, but that the current measure is also  
2 necessary to 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 with Nationwide Mortgage Licensing  
7 System. In accordance with section 454F-A, all nondepository  
8 financial services companies shall register with the Nationwide  
9 Mortgage Licensing System in order to allow their employees who  
10 perform the functions of a mortgage loan originator as defined  
11 in section 454-1 to create a sponsorship relationship as  
12 required by the Nationwide Mortgage Licensing System."

13 SECTION 3. Chapter 454F, Hawaii Revised Statutes, is  
14 amended by adding eleven new sections to be appropriately  
15 designated and to read as follows:

16 "§454F-A Registration of nondepository financial services  
17 loan companies. For purposes of this chapter, nondepository  
18 financial services loan companies licensed pursuant to article  
19 9, chapter 412 are not mortgage loan companies; provided that  
20 nondepository financial services loan companies shall adhere to  
21 any licensing requirements imposed by the Nationwide Mortgage



1 Licensing System on individual employees who perform the  
2 function of a mortgage loan originator.

3 §454F-B Automatic secondary review of license application.

4 The commissioner shall establish, by rule pursuant to chapter  
5 91, a procedure for the secondary review of an application that  
6 was determined on initial review to not meet the criteria for  
7 licensure.

8 §454F-C Mortgage recovery fund. (a) There is created in  
9 the state treasury a special fund to be known as the mortgage  
10 recovery fund to be expended by the commissioner as specified in  
11 this section.

12 (b) Upon application for or renewal of a mortgage loan  
13 originator or mortgage loan originator company license under  
14 this chapter, an applicant shall pay, in addition to any other  
15 fees required under this chapter, a fee to the division of  
16 financial institutions for deposit in the mortgage recovery fund  
17 as follows:

18 (1) \$250 for each principal office location of mortgage  
19 loan originator companies licensed or seeking  
20 licensure under this chapter;



1       (2) \$150 for each branch office location of a mortgage  
2           loan originator company licensed or seeking licensure  
3           under this chapter; and

4       (3) \$100 for each mortgage loan originator licensed or  
5           seeking licensure under this chapter.

6       The commissioner may adjust the fees payable pursuant to  
7       this subsection at the time of license renewal by rule or order  
8       as necessary to maintain a balance of \$2,000,000 in the mortgage  
9       recovery fund.

10       (c) All interest that accrues in the mortgage recovery  
11       fund shall be added to the balance of the mortgage recovery  
12       fund.

13       (d) The mortgage recovery fund shall be used to reimburse  
14       persons to whom a Hawaii court awards actual damages resulting  
15       from acts constituting violations of this chapter by a mortgage  
16       loan originator company or mortgage loan originator licensed or  
17       required to be licensed under this chapter at the time that the  
18       act was committed.

19       (e) Punitive damages awarded by a court shall not be  
20       recoverable from the mortgage recovery fund.

21       (f) The following persons are ineligible to recover from  
22       the mortgage recovery fund:



1        (1) A lender found by a court to have acted, directly or  
2        through an agent, in violation of this chapter where  
3        the violation is a basis of the court's award of a  
4        monetary judgment to an injured party;

5        (2) A person who acquires a mortgage loan through acts  
6        that are found by a court to be in violation of this  
7        chapter where the violation is a basis for the court's  
8        award of a monetary judgment to an injured party; or

9        (3) The spouse, personal representative of the spouse, or  
10       personal representative of a judgment debtor described  
11       in paragraphs (1) or (2).

12       **§454F-D Statute of limitations for claims on mortgage**  
13 **recovery fund.** No action to recover from the mortgage recovery  
14 fund shall be instituted more than one year after termination of  
15 all court proceedings, including appeals, that result in a  
16 judgment recoverable from the mortgage recovery fund.

17       **§454F-E Recovery limits of mortgage recovery fund.** (a) A  
18 person entitled to receive payment from the mortgage recovery  
19 fund may receive reimbursement of actual damages, not including  
20 post judgment interest or attorney's fees and court costs  
21 awarded by the court, subject to the limitations in subsections



1 (b) and (c) and subject to the availability of sufficient moneys  
2 in the mortgage recovery fund at the time payment is ordered.

3 (b) The commissioner shall make payments from the mortgage  
4 recovery fund only pursuant to a court order and in an amount  
5 equal to the lesser of the unsatisfied portion of the creditor's  
6 judgment or \$50,000.

7 (c) Payments from the mortgage recovery fund shall be  
8 limited to an aggregate of \$100,000 against any one person in a  
9 single action. If the total claims in a single action against a  
10 person exceed the aggregate limit of \$100,000, the court shall  
11 prorate payment based on principles of equity.

12 §454F-F Effect on direct recovery. Recovery of damages  
13 from the mortgage recovery fund shall not impede the right of a  
14 person injured by a violation of this chapter to recover  
15 additional damages caused by a violation of this chapter,  
16 pursuant to a court order from a judgment debtor.

17 §454F-G Authorized place of business. Every mortgage loan  
18 originator company licensed pursuant to this chapter shall have  
19 and maintain a principal place of business in this State.

20 §454F-H Reinstatement of expired licenses. (a) A license  
21 issued pursuant to this chapter that expires due to failure to



1 satisfy the minimum standards for renewal may be reinstated if  
2 the licensee meets the following requirements:

3 (1) The license shall be reinstated between January 1 and  
4 February 28 of the year immediately following the year  
5 in which the license expired;

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

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

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





1        §454F-I Presumption of control. An individual is presumed  
2 to control a mortgage loan originator company if that individual  
3 is a director, general partner, managing director, or executive  
4 officer of that mortgage loan originator company.

5        §454F-J Mortgage loan originator and mortgage loan  
6 originator company fees. (a) A mortgage loan originator shall  
7 pay the following fees to obtain and maintain a valid mortgage  
8 loan originator license:

- 9        (1) Initial application fee of \$200;
- 10       (2) License fee of \$200;
- 11       (3) Annual license renewal fee of \$200; and
- 12       (4) Criminal background check fee of \$35.

13       (b) A mortgage loan originator company shall pay the  
14 following fees to maintain a valid mortgage loan originator  
15 company license or branch license.

- 16       (1) Fees payable for a principal office of a mortgage loan  
17 originator company:
  - 18       (A) Initial application fee of \$300;
  - 19       (B) License fee of \$300;
  - 20       (C) Annual license renewal fee of \$300; and



1           (D) Criminal background check fee of \$35 for each  
2           control person, executive officer, director,  
3           general partner, and manager.

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

6           (A) Initial application fee of \$100;

7           (B) License fee of \$100; and

8           (C) Annual license renewal fee of \$100.

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

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

19          §454F-K Division of financial institutions; staff. There  
20          are hereby created permanent staff positions, not subject  
21          to chapter 76, in the division of financial institutions of the  
22          department of commerce and consumer affairs to carry out the



1 purposes of this chapter. All expenses associated with the  
2 hiring and employment of permanent staff pursuant to this  
3 section shall be paid out of the compliance resolution fund  
4 established pursuant to section 26-9(o)."

5 SECTION 4. Section 237-24.8, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) As used in this section:

8 "Activities relating to the general servicing of  
9 fiduciary/custodial accounts" means those activities performed  
10 by trust companies which are directly or indirectly performed  
11 within the fiduciary/custodial relationship between the trust  
12 company or trust department of a financial institution and its  
13 client and which are not offered to any person outside of the  
14 fiduciary/custodial relationship.

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

18 "Deposit" means:

19 (1) Money or its equivalent received or held by a  
20 financial institution in the usual course of business  
21 and for which it has given or is obligated to give  
22 credit to:



- 1 (A) A commercial (including public deposits),  
2 checking, savings, time, or thrift account;
- 3 (B) A check or draft drawn against a deposit account  
4 and certified by the financial institution;
- 5 (C) A letter of credit; or
- 6 (D) A traveler's check, on which the financial  
7 institution is primarily liable;
- 8 (2) Trust funds received or held by a financial  
9 institution, whether held in the trust department or  
10 held or deposited in any other department of the  
11 financial institution;
- 12 (3) Money received or held by a financial institution, or  
13 the credit given for money or its equivalent received  
14 or held by a financial institution in the usual course  
15 of business for a special or specific purpose,  
16 regardless of the legal relationship thereby  
17 established, including, without being limited to,  
18 escrow funds, funds held as security for an obligation  
19 due the financial institution or others (including  
20 funds held as dealers' reserves) or for securities  
21 loaned by the financial institution, funds deposited  
22 by a debtor to meet maturing obligations, funds



1 deposited as advance payment on subscriptions to  
2 United States government securities, funds held for  
3 distribution or purchase of securities, funds held to  
4 meet the financial institution's acceptances or  
5 letters of credit, and withheld taxes;

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

9 (5) Money or its equivalent held as a credit balance by a  
10 financial institution on behalf of its customer if the  
11 financial institution is engaged in soliciting and  
12 holding the balances in the regular course of its  
13 business.

14 "Financial institution" means banks, building and loan  
15 associations, development companies, financial corporations,  
16 financial services loan companies, small business investment  
17 companies, financial holding companies, mortgage loan originator  
18 companies[7] as defined in chapter 454F, and trust companies all  
19 as defined in chapter 241.

20 "Leasing of personal property" occurs if:

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



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



1                   accelerated depreciation, and other tax benefits  
2                   with a substantially similar effect); and

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

5                   (5) The maximum lease term during which the lessor  
6                   financial institution must recover the lessor's full  
7                   investment in the property, plus the estimated total  
8                   cost of financing the property, shall be forty years;  
9                   and

10                  (6) At the expiration of the lease (including any renewals  
11                  or extensions with the same lessee), all interest in  
12                  the property shall be either liquidated or leased  
13                  again on a nonoperating basis as soon as practicable  
14                  (in no event later than two years from the expiration  
15                  of the lease), but in no case shall the lessor retain  
16                  any interest in the property beyond fifty years after  
17                  the lessor's acquisition of the property."

18                  SECTION 5. Section 412:3-502, Hawaii Revised Statutes, is  
19                  amended to read as follows:

20                  "**§412:3-502 Foreign financial institution.** No foreign  
21                  financial institution shall receive deposits, lend money, or pay  
22                  checks, negotiate orders of withdrawal or share drafts from any



1 principal office, branch, agency, automatic teller machine, or  
2 other location in this State, unless expressly authorized by  
3 this chapter, other laws of this State, or federal law; provided  
4 that nothing in this section shall prohibit any foreign  
5 financial institution from participating in the disbursement of  
6 cash through an automatic teller machine network or from  
7 operating from any location in this State as a [~~mortgage broker~~  
8 ~~licensed under chapter 454, loan originator licensed~~] licensee  
9 under chapter 454F, or as a real estate collection servicing  
10 agent."

11 SECTION 6. Section 454F-1, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By adding ten new definitions to be appropriately  
14 inserted and to read:

15 "Borrower" means a person who has applied for or obtained  
16 a residential mortgage loan from or through a licensed mortgage  
17 loan originator or mortgage loan originator company or from a  
18 person required to be licensed as a mortgage loan originator or  
19 mortgage loan originator company under this chapter.

20 "Branch office" means any location, separate from the  
21 principal place of business of the mortgage loan originator  
22 company that is identified by any means to the public or





1 customers as a location at which the licensee holds itself out  
2 as a mortgage loan originator company.

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

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

8 "Employee" means an individual who is:

9 (1) Hired to provide services for a licensee on a regular  
10 basis in exchange for compensation and who does not  
11 provide these services as part of the individual's  
12 independent business;

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

16 (3) Subject to the right of the licensee to direct and  
17 control the actions of the individual.

18 "Exempt registered mortgage loan originator company" means  
19 any person who is required to be licensed by any other state or  
20 federal law, but is not required to be licensed under this  
21 chapter, and has the obligation to register with the Nationwide



1 Mortgage Licensing System because one or more of the person's  
2 employees engage in the business of a mortgage loan originator.

3 "Independent contractor" means any person who has a  
4 contractual arrangement to perform mortgage loan originating,  
5 underwriting, or loan processing services to a licensee, but is  
6 not an employee of a licensee.

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

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

13 "Mortgage loan originator company" means:

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

17 (2) A person not exempt under section 454F-2 who employs  
18 or utilizes the exclusive services of one or more  
19 mortgage loan originators licensed or required to be  
20 licensed under this chapter."

21 2. By amending the definitions of "advertisement" or  
22 "advertising", "applicant", "insured depository institution",



1 "loan processor or underwriter", "mortgage loan originator",  
2 "Nationwide Mortgage Licensing System", "registered mortgage  
3 loan originator", and "residential mortgage loan" to read:

4 "Advertisement" or "advertising" means:

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



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

8 "Applicant" means ~~[an individual]~~ a person applying for the  
9 issuance of a license or a renewal of a license under this  
10 chapter.

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

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



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

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

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

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

16 [~~Registered~~] "Exempt registered mortgage loan originator"  
17 means any individual who:

18 (1) Meets the definition of mortgage loan originator and  
19 is an employee of:

20 (A) An insured depository institution;

21 (B) A subsidiary that is:



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

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

16 SECTION 7. Section 454F-2, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+]§454F-2[+] **Exemptions.** This chapter shall not apply  
19 to the following:

- 20 (1) [A] An exempt registered mortgage loan originator,
- 21 when acting for an insured depository institution, a
- 22 subsidiary of an insured depository institution



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



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

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





1       ~~[(7)]~~ (6) A person or entity solely involved in extensions  
2           of credit relating to timeshare plans, as the term is  
3           defined in ~~[Section]~~ section 101(53D) of Title 11,  
4           United States Code~~[-]~~; or

5       (7) An exempt registered mortgage loan originator company  
6           as defined by this chapter."

7       SECTION 8. Section 454F-3, Hawaii Revised Statutes, is  
8       amended to read as follows:

9       "~~[\+]S454F-3[\+]~~ **Requirement of licensure.** (a) Effective  
10       ~~[August 1, 2010,]~~ January 1, 2011, or such later date approved  
11       by the United States Department of Housing and Urban Development  
12       pursuant to the authority granted under Public Law 110-289,  
13       Section 1508(e), ~~[an individual,]~~ a person, unless specifically  
14       exempted from this chapter, shall not engage in the business of  
15       a mortgage loan originator or mortgage loan originator company  
16       with respect to any dwelling located in this State without first  
17       obtaining and maintaining annually, a license under this  
18       chapter. Each licensed mortgage loan originator or mortgage  
19       loan originator company shall register with and maintain a valid  
20       unique identifier issued by the Nationwide Mortgage Licensing  
21       System, and shall submit to the Nationwide Mortgage Licensing  
22       System any reports that shall be in a form and contain



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

3 (b) A loan processor or underwriter who acts as an  
4 independent contractor shall not engage in the activities of a  
5 loan processor or underwriter unless that loan processor or  
6 underwriter obtains and maintains a license pursuant to section  
7 454F-4. Each loan processor or underwriter licensed as a  
8 mortgage loan originator shall obtain and maintain a valid  
9 unique identifier issued by the Nationwide Mortgage Licensing  
10 System."

11 SECTION 9. Section 454F-4, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "[+]§454F-4[+] **License and registration; application;**  
14 **issuance.** (a) Applicants for a license shall apply in a form  
15 as prescribed by the Nationwide Mortgage Licensing System or by  
16 the commissioner.

17 (b) To fulfill the purposes of this chapter, the  
18 commissioner shall establish relationships or contracts with the  
19 Nationwide Mortgage Licensing System or other entities  
20 designated by the Nationwide Mortgage Licensing System to  
21 collect and maintain records and process transaction fees or



1 other fees related to licensees or other persons subject to this  
2 chapter.

3 (c) For the purpose and the extent necessary to  
4 participate in the Nationwide Mortgage Licensing System, the  
5 commissioner may waive or modify, in whole or in part, by rule  
6 or order, any or all of the requirements of this chapter and  
7 ~~[to]~~ establish new requirements as reasonably necessary to  
8 participate in the Nationwide Mortgage Licensing System.

9 ~~[(d) In connection with an application for licensing as a  
10 mortgage loan originator, the applicant, at a minimum, shall  
11 furnish to the Nationwide Mortgage Licensing System information  
12 concerning the applicant's identity, including:~~

13 ~~(1) Fingerprints for submission to the Federal Bureau of  
14 Investigation, and any governmental agency or entity  
15 authorized to receive the fingerprints for a state,  
16 national, and international criminal history  
17 background check; and~~

18 ~~(2) Personal history and experience in a form prescribed  
19 by the Nationwide Mortgage Licensing System including  
20 the submission of authorization for the Nationwide  
21 Mortgage Licensing System and the commissioner to  
22 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)]~~ (d) 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)]~~ (e) 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           (f) 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 10. Section 454F-5, Hawaii Revised Statutes, is  
 22 amended to read as follows:



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 individual mortgage loan  
12          originator who is employed by the mortgage loan  
13          originator company or who provides exclusive services  
14          to the applicant as a mortgage loan originator, has  
15          completed the pre-licensing education requirement  
16          described in section 454F-6;

17          (5) The applicant, or in the case of an applicant that is  
18          not an individual, each individual mortgage loan  
19          originator who is employed by the mortgage loan  
20          originator company or who provides exclusive services  
21          to the applicant as a mortgage loan originator, has



1 passed a written test that meets the test requirements  
2 in section 454F-7; and

3 (6) The applicant has met the [~~surety bond~~] mortgage  
4 recovery fund requirement as required in section  
5 454F-C."

6 SECTION 11. Section 454F-6, Hawaii Revised Statutes, is  
7 amended as follows:

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

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

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

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

20 "(e) The pre-licensing education requirements approved by  
21 the Nationwide Mortgage Licensing System [~~in subsection (a)~~] for





1 any state shall be accepted as credit towards completion of pre-  
2 licensing education requirements in this State."

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

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

6 "(a) In order to meet the passing of the written test  
7 requirement in section 454F-5, an applicant for licensure as a  
8 mortgage loan originator shall pass, in accordance with the  
9 standards established under this section, a qualified written  
10 test developed by the Nationwide Mortgage Licensing System and  
11 administered by a test provider approved by the Nationwide  
12 Mortgage Licensing System based upon reasonable standards."

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

14 "(d) An individual shall have passed a qualified written  
15 test if the individual achieves a test score of seventy-five per  
16 cent of the correct answers to questions or better. An  
17 individual may retake a test three consecutive times with each  
18 consecutive taking occurring at least thirty days after the  
19 preceding test. After failing three consecutive tests, an  
20 individual shall wait at least six months before taking the test  
21 again. A licensed mortgage loan originator who fails to  
22 maintain a valid license for a period of five years or longer



1 not taking into account any time during which the individual is  
2 [a] an exempt registered mortgage loan originator, shall retake  
3 the test."

4 SECTION 13. Section 454F-8, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+]§454F-8[+] Standards for license renewal. (a) The  
7 minimum standards for license renewal for mortgage loan  
8 originators shall include the following:

- 9 (1) The mortgage loan originator continues to meet the  
10 minimum standards for licensure under section 454F-5;  
11 (2) The mortgage loan originator has satisfied the annual  
12 continuing education requirements in section 454F-9;  
13 and  
14 (3) The mortgage loan originator has paid all required  
15 fees for renewal of the license.

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

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



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

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

6        [~~(b)~~] (c) The license of a mortgage loan originator [~~who~~]  
7        or mortgage loan originator company that fails to satisfy the  
8        minimum standards for license renewal shall expire. The  
9        commissioner may adopt procedures for the reinstatement of  
10       expired licenses consistent with section 454F-H and the  
11       standards established by the Nationwide Mortgage Licensing  
12       System."

13       SECTION 14. Section 454F-9, Hawaii Revised Statutes, is  
14       amended as follows:

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

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

19       (e) A licensed mortgage loan originator:

20       (1) May only receive credit for a continuing education  
21       course in the year in which the course is taken,



1           except for continuing education credits received  
2           pursuant to this chapter; and  
3           (2) May not take the same approved course [~~in the same or~~  
4           ~~successive years~~] more than once in a three-year  
5           period to meet the annual requirements for continuing  
6           education."

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

8           "(i) A person [~~meeting the~~] who meets all other  
9           requirements of section 454F-8(a)(1) and (3) may make up any  
10          deficiency in continuing education as established by rule  
11          adopted by the commissioner[~~-~~] in accordance with section  
12          454F-H."

13          SECTION 15. Section 454F-10, Hawaii Revised Statutes, is  
14          amended to read as follows:

15          "~~[+]§454F-10[+]~~ **Authority to require license.** In addition  
16          to any other duties imposed upon the commissioner, the  
17          commissioner shall require mortgage loan originators and  
18          mortgage loan originator companies to be licensed and registered  
19          through the Nationwide Mortgage Licensing System. The  
20          commissioner is authorized to participate in the Nationwide  
21          Mortgage Licensing System. The commissioner may establish by



1 rule pursuant to chapter 91, requirements for mortgage loan  
2 originators [7] and mortgage loan originator companies including:

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

20 SECTION 16. Section 454F-12, Hawaii Revised Statutes, is  
21 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, or  
13 withholds information or makes a material misstatement  
14 in an application for a license or renewal of a  
15 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 SECTION 17. Section 454F-15, Hawaii Revised Statutes, is  
9 amended by amending subsections (b) to (i) to read as follows:

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





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

11           (d) Each [~~licensed mortgage loan originator, individual,~~  
12 licensee or person subject to this chapter shall make or compile  
13 reports or prepare other information as directed by the  
14 commissioner in order to carry out the purposes of this section,  
15 including[+] but not limited to:

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



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

18           (f) [The] In order to carry out the purposes of this  
19 section, the commissioner may:

20           (1) Retain attorneys, accountants, or other professionals  
21 and specialists, who may be exempt from chapter 76, as  
22 examiners, auditors, or investigators to conduct or



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



1 the report of the examination, report of  
2 investigation, or other writing of the commissioner.

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

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

13 (i) The commissioner may charge an examination fee based  
14 upon the cost per hour per examiner for all [~~mortgage loan~~  
15 ~~originators~~] licensees and persons subject to this chapter who  
16 are examined by the commissioner or the commissioner's staff.  
17 The hourly fee shall be \$40 or an amount as the commissioner  
18 shall establish by rule pursuant to chapter 91."

19 SECTION 18. Section 454F-16, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§454F-16[+] **Mortgage call reports.** Each licensed  
22 mortgage originator and each licensed mortgage loan originator



1 company shall submit to the Nationwide Mortgage Licensing System  
2 reports of condition, using the form entitled "REPORT OF  
3 CONDITION", which shall be in such form and contain such  
4 information as the Nationwide Mortgage Licensing System may  
5 require."

6 SECTION 19. Section 454F-17, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[+]§454F-17[+] **Prohibited practices.** It shall be a  
9 violation of this chapter for a [~~mortgage loan originator~~]  
10 licensee or person subject to this chapter to:

- 11 (1) Directly or indirectly employ any scheme, device, or  
12 artifice to defraud or mislead borrowers or lenders or  
13 to defraud any person;
- 14 (2) Engage in any unfair or deceptive practice toward any  
15 person;
- 16 (3) Obtain property by fraud or misrepresentation;
- 17 (4) Solicit or enter into any contract with a borrower  
18 that provides in substance that the person or  
19 individual subject to this chapter may earn a fee or  
20 commission through "best efforts" to obtain a loan  
21 even though no loan is actually obtained for the  
22 borrower;



- 1           (5) Solicit, advertise, or enter into a contract for  
2           specific interest rates, points, or other financing  
3           terms unless the terms are actually available at the  
4           time of soliciting, advertising, or contracting;
- 5           (6) Conduct any business covered by this chapter without  
6           holding a valid license as required under this  
7           chapter, or assist or aid and abet any person in the  
8           conduct of business under this chapter without a valid  
9           license as required under this chapter;
- 10          (7) Fail to make disclosures as required by this chapter  
11          and any other applicable state or federal law  
12          including rules or regulations thereunder;
- 13          (8) Fail to comply with this chapter or ~~rules~~ any order  
14          or rule issued or adopted under the authority of this  
15          chapter, or fail to comply with any other state or  
16          federal law, including the rules and regulations  
17          adopted thereunder, applicable to any business  
18          authorized or conducted pursuant to this chapter;
- 19          (9) Make, in any manner, any false or deceptive statement  
20          or representation, including with regard to the rates,  
21          points, or other financing terms or conditions for a



- 1 residential mortgage loan, or engage in bait and  
2 switch advertising;
- 3 (10) Negligently make any false statement or knowingly and  
4 wilfully make any omission of material fact in  
5 connection with any information or reports filed with  
6 a governmental agency or the Nationwide Mortgage  
7 Licensing System or in connection with any examination  
8 or investigation conducted by the commissioner or  
9 another government agency;
- 10 (11) Make any payment, threat, or promise, directly or  
11 indirectly, to any person for the purposes of  
12 influencing the independent judgment of the person in  
13 connection with a residential mortgage loan, or make  
14 any payment, threat, or promise, directly or  
15 indirectly, to any appraiser of a property for the  
16 purpose of influencing the independent judgment of the  
17 appraiser with respect to the value of a property;
- 18 (12) Collect, charge, attempt to collect or charge, or use  
19 or propose any agreement purporting to collect or  
20 charge any fee prohibited by this chapter;
- 21 (13) Cause or require a borrower to obtain property  
22 insurance coverage in an amount that exceeds the



1 replacement cost of the improvements as established by  
2 the property insurer;

3 (14) Fail to truthfully account for moneys belonging to a  
4 party to a residential mortgage loan transaction; or

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

19 SECTION 20. Section 454F-18, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

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





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



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

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

16 SECTION 22. Section 846-2.7, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) Criminal history record checks may be conducted by:  
19 (1) The department of health on operators of adult foster  
20 homes or developmental disabilities domiciliary homes  
21 and their employees, as provided by section 333F-22;



- 1           (2) The department of health on prospective employees,  
2           persons seeking to serve as providers, or  
3           subcontractors in positions that place them in direct  
4           contact with clients when providing non-witnessed  
5           direct mental health services as provided by section  
6           321-171.5;
- 7           (3) The department of health on all applicants for  
8           licensure for, operators for, and prospective  
9           employees, and volunteers at one or more of the  
10          following: skilled nursing facility, intermediate  
11          care facility, adult residential care home, expanded  
12          adult residential care home, assisted living facility,  
13          home health agency, hospice, adult day health center,  
14          special treatment facility, therapeutic living  
15          program, intermediate care facility for the mentally  
16          retarded, hospital, rural health center and  
17          rehabilitation agency, and, in the case of any of the  
18          above-related facilities operating in a private  
19          residence, on any adult living in the facility other  
20          than the client as provided by section 321-15.2;
- 21          (4) The department of education on employees, prospective  
22          employees, and teacher trainees in any public school



- 1 in positions that necessitate close proximity to  
2 children as provided by section 302A-601.5;
- 3 (5) The counties on employees and prospective employees  
4 who may be in positions that place them in close  
5 proximity to children in recreation or child care  
6 programs and services;
- 7 (6) The county liquor commissions on applicants for liquor  
8 licenses as provided by section 281-53.5;
- 9 (7) The department of human services on operators and  
10 employees of child caring institutions, child placing  
11 organizations, and foster boarding homes as provided  
12 by section 346-17;
- 13 (8) The department of human services on prospective  
14 adoptive parents as established under section  
15 346-19.7;
- 16 (9) The department of human services on applicants to  
17 operate child care facilities, prospective employees  
18 of the applicant, and new employees of the provider  
19 after registration or licensure as provided by section  
20 346-154;
- 21 (10) The department of human services on persons exempt  
22 pursuant to section 346-152 to be eligible to provide



- 1 child care and receive child care subsidies as  
2 provided by section 346-152.5;
- 3 (11) The department of human services on operators and  
4 employees of home and community-based case management  
5 agencies and operators and other adults, except for  
6 adults in care, residing in foster family homes as  
7 provided by section 346-335;
- 8 (12) The department of human services on staff members of  
9 the Hawaii youth correctional facility as provided by  
10 section 352-5.5;
- 11 (13) The department of human services on employees,  
12 prospective employees, and volunteers of contracted  
13 providers and subcontractors in positions that place  
14 them in close proximity to youth when providing  
15 services on behalf of the office or the Hawaii youth  
16 correctional facility as provided by section 352D-4.3;
- 17 (14) The judiciary on employees and applicants at detention  
18 and shelter facilities as provided by section 571-34;
- 19 (15) The department of public safety on employees and  
20 prospective employees who are directly involved with  
21 the treatment and care of persons committed to a  
22 correctional facility or who possess police powers



1 including the power of arrest as provided by section  
2 353C-5;

3 (16) The department of commerce and consumer affairs on  
4 applicants for private detective or private guard  
5 licensure as provided by section 463-9;

6 (17) Private schools and designated organizations on  
7 employees and prospective employees who may be in  
8 positions that necessitate close proximity to  
9 children; provided that private schools and designated  
10 organizations receive only indications of the states  
11 from which the national criminal history record  
12 information was provided pursuant to section 302C-1;

13 (18) The public library system on employees and prospective  
14 employees whose positions place them in close  
15 proximity to children as provided by section  
16 302A-601.5;

17 (19) The State or any of its branches, political  
18 subdivisions, or agencies on applicants and employees  
19 holding a position that has the same type of contact  
20 with children, vulnerable adults, or persons committed  
21 to a correctional facility as other public employees  
22 who hold positions that are authorized by law to



1 require criminal history record checks as a condition  
2 of employment as provided by section 78-2.7;

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

7 (21) The department of human services on purchase of  
8 service contracted and subcontracted service providers  
9 and their employees serving clients of the adult and  
10 community care services branch, as provided by section  
11 346-97;

12 (22) The department of human services on foster grandparent  
13 program, retired and senior volunteer program, senior  
14 companion program, and respite companion program  
15 participants as provided by section 346-97;

16 (23) The department of human services on contracted and  
17 subcontracted service providers and their current and  
18 prospective employees that provide home and community-  
19 based services under Section 1915(c) of the Social  
20 Security Act (Title 42 United States Code Section  
21 1396n(c)), or under any other applicable section or  
22 sections of the Social Security Act for the purposes





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

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

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

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

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

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

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



1 as provided by section 489D-9;

2 (28) The department of commerce and consumer affairs on  
3 applicants for licensure and persons licensed under  
4 title 24;

5 (29) The Hawaii health systems corporation on:

6 (A) Employees;

7 (B) Applicants seeking employment;

8 (C) Current or prospective members of the corporation  
9 board or regional system board; or

10 (D) Current or prospective volunteers, providers, or  
11 contractors,

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

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

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

18 (B) Each control person, executive officer, director,  
19 general partner, and manager of an applicant for  
20 a mortgage originator company's license,

21 as provided by chapter 454F; and



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

4            SECTION 23. Chapter 454, Hawaii Revised Statutes, is  
5    repealed.

6            SECTION 24. Section 454F-13, Hawaii Revised Statutes, is  
7    repealed.

8            ~~"[§454F-13] Surety bond; required. (a) Each mortgage~~  
9    ~~loan originator shall be covered by a surety bond in accordance~~  
10   ~~with this section. In the event that the mortgage loan~~  
11   ~~originator is an employee or exclusive agent of a person subject~~  
12   ~~to this chapter, the surety bond of the person may be used in~~  
13   ~~lieu of the mortgage loan originator's surety bond.~~

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

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



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

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

5       SECTION 25. Section 454F-21, Hawaii Revised Statutes, is  
6       repealed.

7       ~~["§454F-21] Fees and costs. (a) Each application for a~~  
8       ~~mortgage loan originator license shall be accompanied by an~~  
9       ~~application fee of \$250, or an amount as the commissioner shall~~  
10      ~~establish by rule pursuant to chapter 91.~~

11      ~~(b) Upon obtaining approval for a license, an initial~~  
12      ~~license fee shall be paid to the commissioner in the amount of~~  
13      ~~\$175 or an amount as the commissioner shall establish by rule~~  
14      ~~pursuant to chapter 91.~~

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

19      SECTION 26. As of January 1, 2011 or a later date approved  
20      by the Secretary of the United States Department of Housing and  
21      Urban Development pursuant to the authority granted under Public  
22      Law 110-289, section 1508(e), no new license shall be issued and



1 no license renewal shall be granted under chapter 454, Hawaii  
2 Revised Statutes, and all persons who meet the definition of a  
3 mortgage loan originator or mortgage loan originator company  
4 shall be required to be licensed under chapter 454F, Hawaii  
5 Revised Statutes. A mortgage broker or mortgage solicitor who  
6 holds a license under chapter 454, Hawaii Revised Statutes, that  
7 is valid as of December 31, 2010 who files an application for a  
8 license pursuant to chapter 454F, Hawaii Revised Statutes, by  
9 November 30, 2010 and whose application is determined by the  
10 commissioner to be complete by December 31, 2010 shall be  
11 determined to be in compliance with the licensing provisions of  
12 chapter 454F, Hawaii Revised Statutes, until the commissioner  
13 makes a final determination on the issuance or denial of the  
14 individual's license.

15 SECTION 27. A person licensed under chapter 454F, Hawaii  
16 Revised Statutes, shall not be required to be licensed under  
17 chapter 454, Hawaii Revised Statutes, and shall not be subject  
18 to the provisions of that chapter upon the effective date of the  
19 person's licensure under chapter 454F, Hawaii Revised Statutes;  
20 provided that this section shall not affect rights and duties  
21 that matured, penalties that were incurred, and proceedings that



1 were begun before the effective date of the person's licensure  
2 under chapter 454F, Hawaii Revised Statutes.

3 SECTION 28. The commissioner of financial institutions is  
4 authorized to hire temporary staff members, who shall not  
5 be subject to chapter 76, Hawaii Revised Statutes, in order to  
6 carry out functions related to the initial licensing required by  
7 this Act. All expenses associated with the hiring of temporary  
8 staff pursuant to this Act shall be paid out of the compliance  
9 resolution fund established pursuant to section 26-9(o), Hawaii  
10 Revised Statutes.

11 SECTION 29. There is appropriated out of the compliance  
12 resolution fund established pursuant to section 26-9(o), Hawaii  
13 Revised Statutes, the sum of \$ or so much thereof as  
14 may be necessary for fiscal year 2010-2011 for all expenses,  
15 including the hiring of temporary and permanent of staff,  
16 related to establishing and maintain the licensing regime  
17 created by chapter 454F, Hawaii Revised Statutes.

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

21 SECTION 30. This Act, including the repeal of chapter 454,  
22 Hawaii Revised Statutes, effectuated by section 23, does not



1 affect rights and duties that matured, penalties that were  
2 incurred, and proceedings that were begun before its effective  
3 date.

4 SECTION 31. In codifying the new sections added by section  
5 3 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 32. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 33. This Act shall take effect on July 1, 2010;  
11 provided that the repeal of chapter 454, Hawaii Revised  
12 Statutes, contained in section 23 shall take effect on  
13 January 1, 2011.

14

INTRODUCED BY:

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**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. 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.

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

