

SB 2603

JAN 22 2010

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 "~~[\$454F-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:

Rosalyn H. Park

Amiel Y. Lee

Yee Ching

Will Eyo

J. Lee

Renees. Kohli

Carol Fuh image



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.





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TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010

Friday, February 5, 2010
9:00 a.m.

TESTIMONY ON S.B. NO. 2603 - RELATING TO THE SECURE AND FAIR
ENFORCEMENT FOR MORTGAGE LICENSING ACT

THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").
We appreciate the opportunity to testify on Senate Bill No. 2603. The Department
recommends amendments to this measure because, as drafted it:

- contains provisions that conflict with federal law;
- will adversely affect the functionality of the State mortgage loan originator
(MLO) licensing program; and,

TESTIMONY ON SENATE BILL NO. 2603

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- provides a framework for funding of the MLO program that shifts the costs required to fund the program from the program licensees to other unrelated programs and licensees.

The Department agrees with the U.S. Department of Housing and Urban Development (“HUD”), and with the underlying premise of the bill, that HRS Chapter 454F must be amended.

While Senate Bill No. 2603 addresses the provisions in HRS Chapter 454F that were cited as non-compliant by HUD, the bill also introduces new provisions which, if enacted, may result in a determination by HUD that Hawaii’s law is still non-SAFE compliant. However, the Department believes that the bill’s non-compliant provisions can be corrected to achieve the goal of having the State fully protect Hawaii consumers.

The Department has worked closely over the past year with various entities including HUD; the Conference of State Bank Supervisors (“CSBS”) – which is the organization that works with HUD to aid in implementing the SAFE Act and also drafted the MLO model law (“Model Law”); the State Regulatory Registry LLC (“SRR”) – which is the organization that operates and maintains the Nationwide Mortgage Licensing System (“NMLS”); local industry groups including the Hawaii Association of Mortgage Brokers (“HAMB”); and independent mortgage brokers and solicitors. Through these associations, and with the significant support of HUD and CSBS, the Department has become familiar

with the nuances and complexities involved in effectively regulating the mortgage origination industry.

At the local level, frequent meetings between representatives of HAMB and the Department were initially focused on drafting Administrative Rules to implement the provisions of HRS Chapter 454F, and subsequently on drafting a bill to present to the Legislature to address necessary amendments to HRS Chapter 454F. In addition, because HAMB represents only a small percentage of the industry, the Department met with other industry leaders and participants to obtain their input on the draft legislation. Although collaboration with other industry leaders continues, HAMB elected to end the joint endeavor with the Department and has drafted and requested the introduction of Senate Bill No. 2603. While the bill appears to reflect a good faith effort to include some of the issues raised in the joint discussions between HAMB and the Department, it does not adequately address a number of key points that are critical to the implementation of a SAFE Act-compliant statute.

The stated purpose of Senate Bill No. 2603 is to allow the State to continue to work towards meeting its obligations under the SAFE Act. The bill makes various amendments to application and licensing requirements, institutes a mortgage recovery fund and also attempts to make HRS Chapter 454F SAFE Act compliant. The bill includes MLO companies as regulated entities, which addresses, in part, one of the significant deficiencies of HRS Chapter 454F, but does not include critical licensing requirements for

such entities. Moreover, the bill amends HRS Chapter 454F to reduce fees, which would have the effect of shifting the burden of funding the MLO program from the program licensees – the MLOs – to other unrelated Department programs and their licensees, likely running afoul of the principles set forth by the Hawaii Supreme Court in *HIC v. Lingle*.

Some of the Department's concerns about the bill are:

Federal Law Conflicts:

Section 9 amending HRS § 454F-4, deletes in its entirety, subsection (d), which requires applicants to submit to the NMLS, the national database that will process mortgage loan origination licenses, certain information including fingerprint information, personal history and experience, a credit report, and information relating to administrative, civil, or criminal findings made by any governmental jurisdiction.

These required background checks are a core, non-negotiable, federal SAFE Act requirement for mortgage loan originator licensing by the states, and the deleted language is word for word from the SAFE Act and the SAFE Act compliant Model Law created by CSBS.

Section 26 provides the timeframe within which an applicant must become licensed under HRS Chapter 454F. However, this section would appear to allow a licensee, who holds a valid license under HRS Chapter 454 on December 31, 2010 and who files an application with the Department by November 30, 2010, but who does not receive approval of that application from the Department by December 31, 2010, to continue to

conduct business under HRS Chapter 454F. This arrangement does not appear to comply with the SAFE Act-based Model Law, which presently requires that all mortgage loan originators be licensed by January 1, 2011.

Impacts on Functionality of the Program:

Section 2, adding a new section to Article 9 of HRS Chapter 412 requires *all* "nondepository financial service companies" to register with the NMLS. We note that the bill's terminology is incorrect, since the referenced Chapter 412 regulated entity is in fact a "nondepository financial services *loan* company" ("NFSLC"). Further, requiring all NFSLCs to register with NMLS is overly broad. The provision should only require the registration of those NFSLCs that have employees who originate mortgage loans under HRS Chapter 454F.

Section 3, adding § 454F-A specifically states that NFSLCs are required to "adhere to licensing requirements" purportedly under § 454F-A, but NFSLCs are neither regulated nor licensed under HRS Chapter 454F and therefore cannot be compelled to follow HRS Chapter 454F. Furthermore, the NMLS does not impose licensing requirements, but is merely a database that collects, maintains, and disseminates licensee information. Line 19 of page 3 should therefore read: ". . . provided that employees of nondepository financial services loan companies that engage in mortgage loan origination shall adhere to any licensing requirements imposed by this chapter."

Section 3, adding §§ 454F-C through 454F-F provides for a "Mortgage Recovery Fund." While the Department supports a mortgage recovery fund in place of a bond, the recovery fund provisions set forth in this bill are ambiguous, confusing, and potentially unenforceable. For example, § 454F-F only allows the consumer to proceed against the licensee, "pursuant to a court order from a judgment debtor." Since in this case, the judgment debtor would be the licensee, not the consumer, the consumer is unlikely to obtain any satisfaction proceeding through this process.

Section 13, amending § 454F-8(b)(2) references a "qualified manager" even though there is no requirement for a qualified manager in the statute.

Inadequate Funding

There is no question that any SAFE Act compliant regulatory program established by HRS Chapter 454F will be expensive for licensees. They must obtain background checks and credit checks, undergo pre-licensing testing and obtain post-licensing continuing education, all at significant cost. They will also pay additional fees, including fees that will go directly to the NMLS, as payment for the licensees' required participation in the national database.

The cost to initially establish this program and to keep it running in a SAFE Act compliant manner is significant. However, because this program has been federally mandated, the State has few options on how and when to implement it. The State is

TESTIMONY ON SENATE BILL NO. 2603

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required to use the NMLS and is required to ensure that these licensing requirements are enacted. The Department will be required to pay large fees to the NMLS for its services; Department staff will be required to undergo extensive and continuous training both here and on the mainland; the Department will need to enlist specialized IT and accounting services, on a daily basis, to utilize the NMLS services; and, while a temporary problem, the Department will need the requisite staffing to review what is anticipated to be an intensive workload of processing approximately two thousand or more initial MLO license applications within a 60 day timeframe.

After the initial licensing period, the Department will need to work daily with its own IT and accounting personnel to review and act on information transmitted by licensees to the NMLS (licensing and financial data updates will be sent to each state daily); review and administer new applications and annual license renewals; manage its fee accounts; administer and manage the recovery fund; and most importantly, enforce each of the provisions of the statute whether by inquiry, examination, investigation, or enforcement action, or simply by communication with licensees. The costs associated with having Department employees available to perform these required tasks are substantial and must be covered.

There is a long established practice that programs regulated by the Department be funded by the regulated licensees, and the fees the licensees pay should cover the full cost of the program. This bill sets the combined application and licensing fees for MLOs at

\$400 and renewal fees at \$200. The combined mortgage loan company application and licensing fees are \$600 and the combined branch office application and licensing fees are \$200. These fees are insufficient to adequately fund and maintain this program in a manner that will be SAFE Act compliant.

Unless program fees are increased to enable the Department to hire the necessary number of employees to perform the functions required to comply with the standards established by the SAFE Act, the funds needed to initiate and maintain this program will have to be paid from other sources.

That alternative, i.e., other sources, would not seem to resolve the problem fairly and equitably. Because the MLO licensees themselves stand to benefit from this program, both professionally and financially, the burden of paying for the MLO program should not be placed upon others. If program funding is not fully paid by the users, i.e., the MLO licensees, any deficiency would have to be covered by funds drawn from the Department's compliance resolution fund, which derives its aggregate revenues from the combined payments to the Department by the Department's professional, vocational, and business licensees, under the numerous, separate licensing programs administered by the various divisions within the Department. Payments deposited to the compliance resolution fund by licensees under other Department programs help to defray the expenses associated with that particular regulatory program. As such, the compliance resolution fund is not a pool of

money available to support the operations of all Department programs on an "as needed" basis.

Section 28 of the bill only proposes the authorization to hire temporary employees and does not authorize any permanent employees. In fact, the Department contacted several temp staffing agencies to discuss the possibility of filling some of the anticipated positions with temporary employees but found no agency was able to provide the type of employee needed to staff the program. In any event, we respectfully submit that hiring temporary employees for this program is an inadvisable staffing approach that could actually prevent timely and effective implementation of the statute, to the detriment of Hawaii MLOs and consumers for a number of reasons.

The confidential and highly personal information required to be supplied by MLO applicants to the Department by the provisions of the SAFE Act, the high level of training and expertise required to review applications to ensure compliance with the SAFE Act, and the need for specialized IT and accounting employees to continually monitor the NMLS, requires that the Department be able to hire employees who are incentivized to stay with the program and gain institutional knowledge. Moreover, the concept of sending temporary hires for costly mandatory NMLS systems training on the mainland would be a poor use of program funds. Such training is clearly intended for the benefit of permanent employees who will maintain the program going forward. Finally, as mentioned, it is doubtful that the Department would, in any event, be able to find suitable and qualified

temporary employees to hire—furloughs, modest pay scales, limited benefits and temporary employment will fail to attract the highly motivated and intelligent personnel required to administer a complex, sophisticated program of this nature.

Proposed Amendments:

A number of amendments need to be made to HRS Chapter 454F that are not included in Senate Bill No. 2603. Many of these amendments include language or ideas recommended by CSBS to be included in state legislation to increase the functionality of state programs. These amendments are incorporated in House Bill No. 2278 and summarized here as follows:

- A definition for "taking a residential mortgage loan application": This definition comes from HUD's proposed rule and was defined because it is a phrase used in the Model Law's definition of a "mortgage loan originator." After much confusion regarding who falls within the definition of a mortgage loan originator, HUD added this definition to its proposed rule to clarify the situation.
- Continuing education requirements for licensing renewals and successive year provision for continuing education courses: CSBS has recommended that these provisions be added to all states' legislation.

- Authorized places of business and designation of managers: This is a key regulatory provision. It not only requires a licensee to maintain a principal place of business in this State, but it allows the Department to approve and be notified of locations of branch offices, provides that licensees apply to relocate offices and requires licensees to provide notice of the closing of offices. These provisions are important because they allow the Department to track the locations of licensees in the event consumers have a complaint against a licensee.
- Reinstatement of expired license: This language has been recommended to all states by CSBS.
- Mortgage Recovery Loan Fund: This proposal provides a workable, consumer-oriented recovery fund that will replace bonds. It tracks the language of the current Real Estate Recovery Fund (HRS § 467-16 et seq.) which we know to be user and administrator "friendly." This fund provides that the consumer obtain a court judgment against a licensee and then exhaust all remedies against that licensee before trying to collect from the fund. That way, if the licensee who committed the wrong is solvent, the licensees' own funds will be used to pay the judgment first. If the licensee proves to be insolvent, this fund will pay the judgment, up to \$25,000 per transaction and \$100,000 per licensee. This proposal

explains how the fund will be managed, explains who can recover, and allows the court to direct payment from the fund. The language does not significantly deviate from the Real Estate Recovery Fund, so it will not be an administrative burden to put in place.

- Change in control of licensee: Authorizes the Commissioner to approve a request for a change in control of a licensee's business, enabling the Department to investigate the licensee's new control persons to ensure their competence and integrity, so that consumers continue to be adequately protected following a change in control of a licensee.
- Elders: Adds fines for licensees who commit crimes against elders, a standard provision in many other Hawaii consumer protection statutes.
- Payment of fees: Requires fees to be paid into the compliance resolution fund, except fees designated to be placed in the mortgage loan recovery fund and fees that are payable directly to NMLS.
- Mortgage loan originator fees: Increases fees to fund the program so that the burden of paying for the program will rest with program licensees who financially benefit from the program. For MLOs, the fees that the Department has calculated to be required for the program to be self-sustaining after five years are: \$600 application and licensing fee and \$375 renewal fee. For mortgage loan originator companies, principal

office, the fees are: \$990 application and licensing fee and \$650 renewal fee. For mortgage loan originator companies, branch offices, the fees are: \$250 application and licensing fee and \$125 renewal fee. These fees are comparable to SAFE Act MLO programs of similar scope and size in other states.

- Fees to amend licensing information: These are fees for amending information on the NMLS. These fee categories were recommended by CSBS.
- Complaints against licensees: Allows the Department to investigate and act on consumer complaints.
- False or misleading information on application form: Recommended by CSBS, states are finding that some licensees insert false or misleading information into the NMLS system. This provision states that such conduct is a violation of the MLO licensing statute.
- Voluntary cessation of operation; surrender of license: Provides procedures and approval for a licensee to voluntarily cease business, including plans to transfer assets, liabilities, accounts, etc.
- Exemption for a nondepository financial services loan company from licensing under HRS Chapter 454F (amendment to HRS § 454F-2).

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- Independent contractor MLO: This amendment to HRS § 454F-3 allows a MLO to act as an independent contractor or as an exclusive agent of a mortgage loan originator company.
- Mortgage loan originator company licensing requirements: As an amendment to HRS § 454F-4, this section requires a mortgage loan originator company to be licensed and provides licensing requirements. This section is fundamental to this industry licensing program.
- Misdemeanor background checks: As an amendment to HRS § 454F-5, this new section (a) (4) requires misdemeanor background checks. This section is necessary because in Hawaii, most acts of fraud and dishonesty are misdemeanors and will not appear on the NMLS background check (which has also been deleted from HRS Chapter 454F by this bill).
- Authorization to do out of state background checks: As a new section to be added to HRS §454-F, section (b) allows the Commissioner to conduct background checks in other states where the MLO has conducted mortgage loan origination activities. Any acts of dishonesty in other states that are not federal offenses will not appear on the NMLS background checks.

- Challenge process to information on the NMLS: Amends HRS § 454F-11 to allow mortgage loan originator companies to challenge information placed in the NMLS.
- Examination *per diem* and travel expenses: Amends HRS § 454F-15(i) to add per diem and travel expenses for the discretionary examinations allowed in this section.
- Authority to hire employees. Amends HRS § 454F-18 to allow the Commissioner to hire six permanent examiners and one supervisor who are exempt from HRS Chapter 76, and two permanent office assistants.
- Appropriations: Section 33 provides for an appropriation of money for the fiscal year 2009-2010 to immediately begin implementation of this program, and also clearly authorizes the hiring of permanent staff consisting of one supervisor and six examiners who are exempt from HRS Chapter 76, and two office assistants.

Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
ON
SENATE BILL NO. 2603

February 5, 2010

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE
LICENSING ACT

Senate Bill No. 2603 amends the application, licensing, and regulatory requirements of the Secure and Fair Mortgage Licensing Act. Among other amendments, the bill also authorizes the Commissioner of Financial Institutions to hire an unspecified number of temporary and permanent staff and creates the Mortgage Recovery special fund. The purpose of the fund is to reimburse individuals awarded actual damages from mortgage loan companies or licensed mortgage loan originators. Revenue comes from fees charged for applications made by mortgage loan companies or licensed mortgage loan originators.

As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-52.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



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Scott Coffman
President
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Testimony to the Senate Committee on Consumer Protection and Commerce

Friday, February 5, 2010 9:00 a.m.
Conference Room 229

To: Senator Rosalyn H. Baker, Chair
Members of the Senate Committee on Consumer Protection and Commerce

Re: S.B. NO. 2603 – Relating To The Secure And Fair Enforcement For Mortgage Licensing Act

I am Scott Coffman, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (“HAMB”), a 250+ member of mortgage professionals, supports passage of S.B. NO. 2603.

Members of HAMB worked closely in late 2009 with the Department of Financial Institutions staff, first on rule-making for HRS 454F, and then on a bill-drafting process to amend key points in the statute which were not compliant with the S.A.F.E. Act, incorporate rules into the amendment which would otherwise take six to 18 months to move through the rule-making process, and address omissions in the statute that were inconsistent with prior mortgage industry legislation and the manner in which the industry operates.

Two main concerns are the timing of the transition and the levels of staffing, since the industry will need to support the new department to be formed. Since DFI will not be ready to implement the new NMLS based licensing format until at least October 2010, with over 2,000 licensed MLO’s it is unlikely that all license applicants could be processed prior to January 1, 2011. HAMB also feels that DFI’s recommended staffing levels are too high for subsequent years when the bulk of the department’s work will be processing renewals, after the initial bottle-neck of license applicants are processed through the new licensing system this year.

The Hawaii Association of Mortgage Brokers supports passage of S.B. NO. 2603 by the Senate Committee on Consumer Protection and Commerce

Sincerely,

Scott Coffman

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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February 5, 2010

Sen. Rosalyn H. Baker, Chair,
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2603 (Secure and Fair Enforcement for Mortgage Licensing Act)**
Hearing Date/Time: Friday, February 5, 2010, 9:00 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA supports this Bill, with amendments.

The purposes of this Bill are to: make amendments to the application, licensing, and regulatory requirements of the Secure and Fair Enforcement for Mortgage Licensing Act; establish the mortgage recovery fund to protect consumers injured by violations of HRS Chapter 454F; include mortgage loan originator companies in the regulatory system established by HRS Chapter 454F; and authorize the Commissioner of Financial Institutions to hire temporary and permanent staff to effectuate the purposes of HRS Chapter 454F.

HRS Chapter 454F is the Secure and Fair Enforcement for Mortgage Licensing Act ("Hawaii SAFE Act"). It was enacted in 2009 pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("federal SAFE Act") and is based on the model state law of the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR").

We propose two amendments to this Bill.

1. Loan Processors and Underwriters.

The federal SAFE Act, the CSBS/AARMR model state law, the proposed rules of the federal Department of Housing & Urban Development, and the Hawaii SAFE Act are all consistent in their treatment of loan processors and underwriters. For example, the federal SAFE Act at Sections 1503(4) and 1504(b) states that a "supervised" loan processor or underwriter shall not be required to be state licensed, while an "independent contractor" loan processor or underwriter is to be licensed.

Similarly, under the Hawaii SAFE Act in HRS Sec. 454F-1, the definition of "loan processor or underwriter" is an individual who performs the duties as an "employee" under the supervision or instruction of a mortgage loan originator or a person who is exempt from licensing.

This Bill adds a definition of "independent contractor" on page 18, beginning on line 3 stating that such a person is "not an employee of the licensee". This Bill next deletes the exemption for a loan processor or underwriter on page 23, beginning on line 18. Then on page 26, beginning

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Testimony of Hawaii Financial Services Association
February 5, 2010
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on line 3, this Bill adds in wording that a loan processor or underwriter "who acts as an independent contractor" needs to be licensed.

What is unstated after those revisions in this Bill is that a loan processor or underwriter (who is an "employee" by definition) shall not be required to be licensed. For that reason, the language in the new HRS Section 454F-3(b) of this Bill on page 26, beginning on line 3, needs to be amended.

Our proposed amendment is attached as Amendment No. 1. It brings in the text from the existing statutory exemption for a loan processor or underwriter (HRS Section 454F-2(5)) which is being deleted from this Bill on page 23, beginning on line 18.

This proposed amendment is consistent with the federal SAFE Act (Sections 1503(4) and 1504(b)), the CSBS/AARMR model state law (MSL XX.XXX.030(5), 30(6), and 40(4)), and the proposed rules of the federal Department of Housing & Urban Development in the December 15, 2009 Federal Register at page 66557.

2. Nondepository financial services loan companies.

Under new wording in this Bill on page 3, beginning on line 16, nondepository financial services loan companies licensed pursuant to Article 9, HRS Chapter 412, are not "mortgage loan companies". We agree with that intent.

However, the phrase "mortgage loan companies" on page 3, line 19, should be "mortgage loan originator companies", which is the term used elsewhere in this Bill. See our proposed Amendment No. 2 which is attached.

We ask that you incorporate our two proposed amendments in a Senate Draft 1 of this Bill.
Thank you for considering our testimony.


MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

Amendment No. 1:

The proposed new HRS Section 454F-3(b) on page 26, beginning on line 3, should be revised to read:

“(b) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items) that the individual can or will perform any of the activities of a mortgage loan originator, who does not advertise that the individual can or will perform any of the activities of a mortgage loan originator, and who does not engage in the activities of a mortgage loan originator shall not be required to be licensed under this chapter; provided that an individual who engages in the activities of a loan processor or underwriter as an independent contractor must obtain and maintain a license as a mortgage loan originator pursuant to section 454F-4 and shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System.”

Amendment No. 2:

The proposed new HRS Section 454F-A on page 3, on line 19 should be revised to add in the word “originator”:

“9, chapter 412 are not mortgage loan originator companies; provided that”



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Presentation to the Senate Committee on Commerce & Consumer Protection

Friday, February 5, 2010, at 9:00 am, Conf Rm 229

Testimony for SB 2603 Relating to the Secure and Fair Enforcement for
Mortgage Licensing Act

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Members of the Senate Committee on Commerce & Consumer Protection

My name is Neal Okabayashi for the Hawaii Bankers Association. We oppose SB 2603 because inartful drafting may mean the most heavily regulated financial companies: banks and credit unions – would be mortgage loan origination companies. If those offending sections are amended, we would consider withdrawing our opposition.

The problem is that “mortgage loan origination company” is defined as a person (and a bank or credit union is a person) who employs a licensed mortgage loan originator (a natural human). See page 18, starting line 13. Banks and credit unions may hire a licensed mortgage originator who is registered with the Registry. The federal banking regulators specifically foresaw that possibility and in the proposed SAFE Act rules, the federal banking regulators specifically say that hiring a state licensed mortgage loan originator satisfies the obligation of insured depositories under the SAFE Act to have their employees register with the Register.

To simplify matters, we recommend this definition of “mortgage loan origination company. “Mortgage loan origination company means a person who engages in the business of mortgage loan originations, as an individual or through employees who are required to be licensed under this chapter, and is not an insured depository institution.”

On page 17, beginning line 18, there is a new definition called “Exempt registered mortgage loan originator company” which only exempts a company if it is required to be registered with the Registry. This definition makes no sense because banks and credit unions are not required to register with the Register and thus would not be exempt. It would be much simpler and factually accurate to amend this definition as follows:

“Exempt mortgage loan origination company” means an insured depository institution, including a credit union, or a subsidiary of an insured depository institution or an institution regulated by the Farm Credit Administration, and any person who is not required to be licensed under this chapter.”

Thus, we submit that if this bill is to be adopted by this Committee, the bill should be amended as we request.

Thank you for this opportunity to testify, and I would be happy to answer any questions the Committee may have.



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Testimony to the Senate Committee on Commerce & Consumer Protection
Friday, February 5, 2010 at 9:00 am

Testimony in opposition to SB 2603, Relating to the SAFE Act

To: The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice-Chair
Members of the Committee on Commerce & Consumer Protection

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for over 90 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to SB 2603. As a matter of federal law, employees of federally-insured credit unions are not subject to state law, therefore, are not required to be licensed under this chapter. Adopting the new definitions of “registered mortgage loan originator” and “exempt registered mortgage loan originator” outlined in this bill would be in violation of the federal laws that credit union employees fall under.

We also oppose lines 13-14 on page 20 of this bill. Removing the words “whose deposits are insured by the National Credit Union Administration” seems to serve no purpose.

Thank you very much for the opportunity to testify.