
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 **PART I**

2 SECTION 1. The legislature finds that members of the
3 military and their dependents are increasingly vulnerable to
4 unscrupulous and predatory lending practices. These practices
5 create a cycle of debt, thus detracting from military members'
6 financial well being and military readiness. The John Warner
7 National Defense Authorization Act for Fiscal Year 2007 (Public
8 Law No. 109-364) contains provisions that place limits on the
9 terms of credit that may be extended to military members and
10 their dependents. This federal act and the regulations that
11 implement it are designed to protect military members and their
12 families from unfair lending practices that are commonly used by
13 issuers of payday loans, vehicle title loans, and tax refund
14 anticipation loans. While federal regulations do not designate
15 an enforcement agency within the federal government, they do not
16 limit states from enforcing the federal law. Therefore, the
17 legislature also finds that assistance from state regulators is
18 essential to enforcing the law and protecting military service



1 members and dependents from fraud, deception, and abusive
2 practices. The legislature further finds that, in order to
3 enforce the law, state authorities should be authorized to
4 access the Federal Trade Commission's Consumer sentinel/military
5 database, part of the Consumer Sentinel Network, which provides
6 a secure database of allegations of fraud, deception, and
7 abusive practices reported by military service members.

8 The purpose of this Act is to authorize the director of
9 commerce and consumer affairs to enforce certain federal laws
10 that protect military members and their families from abusive
11 lending practices.

12 SECTION 2. Chapter 481B, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 **"§481B- Protection of military; lending practices. (a)**
16 The director of commerce and consumer affairs may enforce Title
17 10 United States Code section 987, (section 670 of the John
18 Warner National Defense Authorization Act for Fiscal Year 2007,
19 Public Law No. 109-364), and federal regulations promulgated
20 thereunder, including but not limited to Title 32 Code of
21 Federal Regulations Part 232.



1 (b) The director of commerce and consumer affairs may
2 enter into an agreement with the United States Federal Trade
3 Commission to allow the director to access the Consumer
4 sentinel/military database, part of the Consumer Sentinel
5 Network, for the purpose of enforcing subsection (a)."

6 **PART II**

7 SECTION 3. The legislature finds that the foreclosure
8 crisis in our State is far from over. The majority of mortgage
9 lenders have halted nonjudicial foreclosure proceedings due to
10 their perceived liability risk following the enactment of Act
11 48, Session Laws of Hawaii 2011. This has created a huge
12 backlog of foreclosures in the State.

13 In comparison, the increase in judicial foreclosures is
14 modest compared to the number of foreclosures anticipated to
15 occur in the near future. A recent article by the Associated
16 Press dated March 14, 2012, noted that RealtyTrac projects
17 foreclosures to rise by 25 per cent this year.

18 The legislature asserts that the ongoing efforts to
19 implement effective foreclosure mediation, or dispute resolution
20 programs, in both judicial and nonjudicial foreclosures are
21 critical in avoiding the unnecessary loss of homes as well as
22 addressing the courts' growing foreclosure backlog.



1 In addition, there is growing evidence that many of these
2 pending foreclosures involve abuses and fraud committed by
3 mortgage lenders. On February 15, 2012, the New York Times
4 reported that an audit of four hundred recent foreclosures
5 completed by the San Francisco County's recording office showed
6 that eighty-four per cent of the files contained what appeared
7 to be clear violations of law. Fully two-thirds of these had at
8 least four violations or irregularities. In fact, it was clear
9 that many of the mortgage lenders proceeding with foreclosure
10 actions might not be able to adequately demonstrate its right to
11 collect on the borrower's indebtedness, or prove that the
12 mortgagee has legal authority to foreclose on a property.

13 The legislature further notes that while a recent multi-
14 state settlement agreement with the five largest national loan
15 services was intended to address foreclosure misconduct and
16 direct "hard dollars" to states (including Hawaii), for
17 counseling, public education, mediation, and the enforcement of
18 laws protecting mortgage consumers, questions have been raised
19 as to whether the settlement provides adequate protections and
20 relief to Hawaii's consumers. Moreover, this settlement does
21 not even cover half the mortgage loans in the state.



1 Accordingly, this Act creates a mortgage loan purchase
2 program intended to assist consumers who are able to pay a
3 mortgage but are facing imminent foreclosure. The Hawaii
4 housing finance and development corporation (corporation) would
5 purchase the existing loan between a mortgage lender and a
6 property occupant. The corporation would then enter into a loan
7 agreement with the property occupant.

8 The mortgage lender would be required to respond to
9 requests for proof of legal authority to foreclose on the
10 property. The mortgage lender's responses and the documentation
11 they provide would be recorded. This would enable the
12 corporation to assess the value of defective loans, enhance
13 transparency to the mortgage lending process, and allow for
14 better resolution of previous bad actions by mortgage lenders
15 through the courts.

16 The corporation would extend the full faith and credit of
17 the State of Hawaii to guaranty payment on the existing loan to
18 the mortgage lender. However, because this guaranty will
19 undoubtedly raise the value of the indebtedness of the existing
20 loan, the corporation would be able to further negotiate a lower
21 purchase price with the mortgage lender on the existing loan.



1 In addition, the corporation would be authorized to
2 aggregate the purchase of multiple existing loans with a single
3 mortgage lender, allowing for even lower purchase prices to be
4 negotiated because of economies of scale.

5 The savings on the corporation's purchase price of the loan
6 could then be extended to the property occupant since the total
7 indebtedness on the loan between the corporation and the
8 property occupant would be less than the existing loan between
9 the mortgage lender and the property occupant.

10 This Act serves multiple goals. Because the mortgage
11 lender would deal directly with the corporation, a quasi-
12 governmental agency, rather than the average "consumer", the
13 corporation would provide greater scrutiny of lender practices
14 in implementing the purchase of the existing loan, thus
15 protecting the interests of the general consuming public.

16 As a requirement under this Act, the property occupant must
17 agree to assign a limited power of attorney to the corporation
18 on matters pertaining to the existing loan between the property
19 occupant and the mortgage lender. This will allow the
20 corporation to represent the property occupant during all
21 transactions involving the property while the agreement between
22 the property occupant and the corporation is in effect.



1 Most importantly, the property occupant benefits by being
2 able to continue to occupy the property so long as the property
3 occupant can satisfy a reasonable loan with the corporation.

4 The mortgage lender would also benefit from this Act
5 because the past indebtedness or an agreed upon portion thereof
6 would be guaranteed by the full faith and credit of the State,
7 even in cases where it is unclear whether the mortgage lender is
8 able to show clear title and legal standing to collect on the
9 mortgage loan.

10 And finally, the State will benefit by: ensuring clear
11 title to residential property; reducing the hardships on
12 families and communities resulting from wrongful or avoidable
13 foreclosures; safeguarding our courts and recording systems from
14 illegal, improper, or fraudulent filings; stabilizing the
15 housing market; and preserving the existing stock of residential
16 housing.

17 Should the property occupant subsequently default, the
18 corporation would take possession of the property. The property
19 can then be land banked, revitalized, rented or resold by the
20 corporation, thus eliminating urban blight and deteriorating
21 property values experienced in many communities throughout the
22 United States because of the mortgage lending crisis.



1 This Act would also require program participants to consult
2 with an approved housing counselor or approved budget and credit
3 counselor.

4 The purpose of this Act is to create a distressed
5 residential properties program to address the mortgage loan
6 crisis in the State of Hawaii.

7 SECTION 4. Chapter 201H, Hawaii Revised Statutes, is
8 amended by adding a new subpart to Part III, to be appropriately
9 designated and to read as follows:

10 **"K. DISTRESSED RESIDENTIAL PROPERTIES PROGRAM**

11 **§201H- A. Distressed residential properties program**
12 **special fund; special recording fees; revenue bonds.** (a) There
13 is established the distressed residential properties program
14 special fund within the treasury of the State to be administered
15 by the corporation. The following may be deposited into the
16 fund: the special recording fee established pursuant to this
17 section; the assessment levied on financial institutions
18 established pursuant to section 412:2-105; appropriations made
19 by the legislature; private contributions; repayment of loans;
20 interest; other returns; and money from other sources. The fund
21 shall be used for the necessary expenses in administering
22 programs authorized by this subpart.



1 (b) A special mortgage recording fee shall be imposed on
2 each mortgage secured by residential property and each amendment
3 to a mortgage secured by residential property which increases
4 the principal amount of the secured debt which is recorded in
5 the bureau of conveyances of the State under chapter 502 or
6 filed with the assistant registrar of the land court of the
7 State under chapter 501.

8 The special fee shall be in an amount equal to one-
9 twentieth of one percent of the stated principal amount of the
10 debt secured by the mortgage or, in the case of an amendment of
11 a mortgage, an amount equal to one-twentieth of one percent of
12 the amount of the increase of the stated principal debt.

13 The special fee shall be in addition to any applicable fees
14 under chapter 501 or 502. The special fees shall be collected
15 by escrow depositories licensed under chapter 449, or financial
16 institutions authorized to engage in the escrow business, or
17 persons and companies permitted to engage in limited escrow
18 transactions under section 449-3. The special mortgage
19 recording fees shall be collected prior to recordation of the
20 mortgage with the bureau of conveyances or the assistant
21 registrar of the land court of the State and shall be deposited
22 into the distressed residential properties program special fund.



1 The bureau of conveyances and the assistant registrar of the
2 land court may also collect and transmit any special fees for
3 deposit into the distressed residential properties program
4 special fund.

5 (c) Notwithstanding any law to the contrary, the fund may
6 be used to purchase, in whole or in part, existing loans, of
7 distressed residential properties in accordance with this
8 subpart. The corporation may contract with a mortgage lender to
9 administer the purchase of existing loans. The contract may
10 contain provisions as determined by the corporation to be
11 necessary or appropriate to provide security for its bonds.

12 (d) Notwithstanding any law to the contrary, the
13 corporation may issue revenue bonds in amounts not to exceed
14 \$25,000,000 for the purposes of this part. The revenue bonds
15 shall not constitute indebtedness within the meaning of any
16 constitutional or statutory provision limiting the incurring of
17 indebtedness. Revenue bonds issued under this section and the
18 income derived therefrom shall be exempt from all state and
19 county taxation. Proceeds received from the issuance of any
20 revenue bond shall be deposited into the distressed residential
21 properties program special fund.



1 (e) At least twenty days prior to the convening of each
2 regular session, the corporation shall report to the legislature
3 on the number of loans purchased and the disposition of the
4 loans by the corporation.

5 §201H- B. Program eligibility. (a) A mortgagor who has
6 been using the subject property as a primary residence for a
7 continuous period of not less than two hundred days immediately
8 prior to the date when the mortgagor received a letter of
9 default on the mortgage or notice that the mortgagor's
10 application for a mortgage modification under a federally
11 sponsored program has been denied shall be entitled to apply for
12 consideration in the distressed residential properties program;
13 provided that no property subject to legislative approval of
14 sale or gift of land in accordance with section 171-64.7, shall
15 be eligible to participate in this program. The application
16 shall conform to rules adopted by the corporation and shall
17 include copies of:

18 (1) The three most recent billing statements for the
19 mortgage loan;

20 (2) The mortgage document; and



1 (3) The letter of default or notice that the mortgagor's
2 application for a mortgage modification under a
3 federally sponsored program has been denied.

4 (4) Documentation, pursuant to rules adopted by the
5 corporation in accordance with chapter 91, by the
6 corporation, detailing the mortgagor's financial
7 condition, including but not limited to any copies of
8 pay stubs, W-2 forms, social security or disability
9 income, retirement income, child support income, or
10 any other income that the corporation deems relevant
11 to the mortgagor's ability to fulfill the terms of
12 this subpart.

13 (b) Within forty-five days of receiving an application
14 pursuant to subsection (a), the corporation shall review the
15 application and determine whether the property shall be accepted
16 for further evaluation.

17 If the corporation accepts the property for further
18 evaluation, within the forty-five day review period, the
19 corporation shall conduct an appraisal of the property in
20 accordance with rules adopted pursuant to chapter 91, and notify
21 the mortgagee and its agents on record at the bureau of
22 conveyances, including all affiliates that may be reported



1 pursuant to any affiliate statement recorded pursuant to
2 sections 454M-5(a)(4) and 667-58(a), and any entities purporting
3 to represent the mortgagee, as reflected in the mortgage
4 statements provided in the application. The notice shall
5 describe the program and include details about the program's
6 requirements, as set forth by rules adopted by the corporation
7 in accordance with chapter 91. The corporation shall either
8 file a copy of the notice in the office of the assistant
9 registrar of the land court under chapter 501, or record it in
10 the bureau of conveyances under chapter 502, or both, as
11 appropriate.

12 If the corporation declines to accept the property for
13 further evaluation, the corporation shall provide written
14 notification to the applicant stating the reasons for that
15 determination within the forty-five day review period.

16 (c) Within thirty days of receiving notice under
17 subsection (b), the mortgagee shall submit a written response to
18 the corporation. The response shall include:

19 (1) A copy of the promissory note, signed by the
20 mortgagor, including any endorsements, allonges,
21 amendments, or riders to the note evidencing the
22 mortgage debt and the mortgagee's legal right to



1 enforce the note under section 490:3-203(b) and
2 articles 3 and 9 of the Uniform Commercial Code
3 generally;
4 (2) A copy of the mortgage document and any amendments,
5 riders, or other documentation evidencing the
6 mortgagee's right to foreclose and interest in the
7 property, including any interest as a successor,
8 transferee, or assignee; and
9 (3) A certification under penalty of perjury describing
10 the nature of the mortgagee's legal ownership of the
11 mortgage loan that includes:
12 (A) Information about the chain of possession and the
13 transfer between all holders in due course of the
14 mortgage note from the origination of the
15 mortgage loan to the present mortgagee; provided
16 that descriptions of each transaction that
17 effectuated a transfer of the mortgage note shall
18 include:
19 (i) The names of the individuals involved;
20 (ii) The principal employers and the employers'
21 state of incorporation for the individuals
22 involved;



- 1 (iii) The authority conferred to the individuals;
- 2 (iv) The dates on which the mortgage note was
- 3 negotiated; and
- 4 (v) The manner in which the note was endorsed;
- 5 (B) Information about the assignment or transfer of
- 6 each mortgage agreement, including:
- 7 (i) The entities assigned the rights to enforce
- 8 the mortgage agreement;
- 9 (ii) The individuals who signed documentation to
- 10 effectuate the transfer and their titles,
- 11 principal employers, and principal
- 12 employers' state of incorporation;
- 13 (iii) A description of the authority conferred to
- 14 the individuals;
- 15 (iv) The dates on which the mortgage agreements
- 16 were assigned or transferred;
- 17 (v) The manner of the assignment or transfer;
- 18 and
- 19 (vi) A description of the extent to which the
- 20 mortgage agreement transfers or assignments
- 21 coincided with the negotiations or transfers
- 22 of the mortgage note; and



1 (C) The bureau of conveyances document number for
2 every assignment or transfer of the mortgage note
3 or mortgage agreement recorded and a copy of each
4 filing.

5 The mortgagee's response shall provide an explanation for
6 any failure to provide any of the items enumerated in this
7 subsection. A copy of all documents received from the mortgage
8 lender, including any response by the mortgage lender for
9 failure to transmit required documentation shall be filed or
10 recorded by the corporation in the office of the assistant
11 registrar of the land court under chapter 501, or the bureau of
12 conveyances under chapter 502, or both, as appropriate.

13 (d) The corporation, at any time, may contract with the
14 mortgage lender to purchase, in whole or in part, the existing
15 loan. The mortgagee's response under subsection (c) shall be
16 used to evaluate the value of the existing loan. The sale of
17 the existing loan shall be executed by way of mortgage,
18 agreement of sale, or other instrument to secure the
19 indebtedness with the mortgage lender.

20 If the mortgage lender declines to contract for purchase of
21 the existing loan, the corporation may acquire the existing loan
22 by condemnation in accordance with part iv of chapter 101, and



1 the title to the property in accordance with chapter 101. For
2 purposes of this subsection, the requirements of section 201H-
3 13, shall not apply.

4 (e) The purchase of the existing loan from the mortgage
5 lender shall be construed as a loan with the property occupant,
6 which shall be executed by way of mortgage, agreement of sale,
7 or other instrument to secure the indebtedness with the
8 corporation. The agreement of sale, mortgage, or other
9 instrument executed between the property occupant and the
10 corporation shall contain:

11 (1) A provision transferring title to the property to the
12 corporation; provided that upon satisfactory
13 completion of all terms and conditions of the
14 agreement, the corporation shall transfer title back
15 to the property occupant; and

16 (2) A provision assigning power of attorney to the
17 corporation on matters pertaining to the existing loan
18 between the property occupant and the mortgage lender;
19 provided that the assignment of power of attorney
20 shall be extinguished upon satisfactory completion of
21 all terms and conditions of the agreement, or default
22 on the agreement by the property occupant.



1 (f) If the property occupant defaults on the payment of
2 any loan, the corporation shall take all necessary action to
3 collect the delinquent principal and interest on the loan and
4 may take all action allowed to holders of obligations, including
5 the power to repossess, lease, rent, repair, renovate,
6 modernize, and sell the property.

7 (g) The mortgages, agreements of sale, and other
8 instruments of indebtedness, at the direction of the
9 corporation, may be assigned to and serviced by commercial banks
10 and other lending institutions doing business in the State at a
11 fee of not more than one-half of one per cent of the amount
12 loaned to the purchaser.

13 **§201H- C. Terms and conditions of qualified mortgages.**
14 The terms and conditions for property occupants and qualified
15 mortgagees participating in the distressed residential
16 properties program shall be set forth by rules adopted by the
17 corporation in accordance with chapter 91; provided that:

18 (1) The amount of the purchase price of the mortgage loan
19 shall be paid to the qualified mortgagee and shall be
20 deemed to fully satisfy the subject mortgage debt and
21 release the lien held by the mortgagee at the time the
22 mortgage, agreement of sale or other instrument to



- 1 secure the indebtedness between the corporation and
2 the mortgagee is executed;
- 3 (2) The property occupant shall be permitted to occupy the
4 property for the duration of the loan period so long
5 as the property occupant meets all requirements of the
6 loan;
- 7 (3) The property occupant shall be required to consult
8 with an approved housing counselor or an approved
9 budget and credit counselor as defined under chapter
10 667, Hawaii Revised Statutes;
- 11 (4) The property occupant shall be prohibited from selling
12 the property for a period of 60 months after the terms
13 of the loan agreement have been satisfied; and
- 14 (5) Upon any resale of the property to a subsequent
15 purchaser, the property occupant shall pay the
16 corporation a share of the appreciation represented by
17 the amount of the existing loan purchased by the
18 corporation divided by the total amount of the
19 mortgage loan agreed upon between the mortgage lender
20 and the property occupant, rounded up to the nearest
21 one-hundredth of one percentage point, multiplied by
22 the difference between the resale price of the



1 property minus the value of the property at the time
2 the mortgage loan was executed between the mortgage
3 lender and the property occupant; provided that the
4 property is sold for fair market value at a price
5 approved by the corporation."

6 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 “(a) No department of the State other than the attorney
9 general may employ or retain any attorney, by contract or
10 otherwise, for the purpose of representing the State or the
11 department in any litigation, rendering legal counsel to the
12 department, or drafting legal documents for the department;
13 provided that the foregoing provision shall not apply to the
14 employment or retention of attorneys:

15 (1) By the public utilities commission, the labor and
16 industrial relations appeals board, and the Hawaii
17 labor relations board;

18 (2) By any court or judicial or legislative office of the
19 State; provided that if the attorney general is
20 requested to provide representation to a court or
21 judicial office by the chief justice or the chief
22 justice's designee, or to a legislative office by the



1 speaker of the house of representatives and the
2 president of the senate jointly, and the attorney
3 general declines to provide such representation on the
4 grounds of conflict of interest, the attorney general
5 shall retain an attorney for the court, judicial, or
6 legislative office, subject to approval by the court,
7 judicial, or legislative office;

8 (3) By the legislative reference bureau;

9 (4) By any compilation commission that may be constituted
10 from time to time;

11 (5) By the real estate commission for any action involving
12 the real estate recovery fund;

13 (6) By the contractors license board for any action
14 involving the contractors recovery fund;

15 (7) By the office of Hawaiian affairs;

16 (8) By the department of commerce and consumer affairs for
17 the enforcement of violations of chapters 480 and
18 485A;

19 (9) As grand jury counsel;

20 (10) By the Hawaiian home lands trust individual claims
21 review panel;



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



1 SECTION 6. Section 76-16, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The civil service to which this chapter applies shall
4 comprise all positions in the State now existing or hereafter
5 established and embrace all personal services performed for the
6 State, except the following:

- 7 (1) Commissioned and enlisted personnel of the Hawaii
8 national guard as such, and positions in the Hawaii
9 national guard that are required by state or federal
10 laws or regulations or orders of the national guard to
11 be filled from those commissioned or enlisted
12 personnel;
- 13 (2) Positions filled by persons employed by contract where
14 the director of human resources development has
15 certified that the service is special or unique or is
16 essential to the public interest and that, because of
17 circumstances surrounding its fulfillment, personnel
18 to perform the service cannot be obtained through
19 normal civil service recruitment procedures. Any such
20 contract may be for any period not exceeding one year;
- 21 (3) Positions that must be filled without delay to comply
22 with a court order or decree if the director



1 determines that recruitment through normal recruitment
2 civil service procedures would result in delay or
3 noncompliance, such as the Felix-Cayetano consent
4 decree;

5 (4) Positions filled by the legislature or by either house
6 or any committee thereof;

7 (5) Employees in the office of the governor and office of
8 the lieutenant governor, and household employees at
9 Washington Place;

10 (6) Positions filled by popular vote;

11 (7) Department heads, officers, and members of any board,
12 commission, or other state agency whose appointments
13 are made by the governor or are required by law to be
14 confirmed by the senate;

15 (8) Judges, referees, receivers, masters, jurors, notaries
16 public, land court examiners, court commissioners, and
17 attorneys appointed by a state court for a special
18 temporary service;

19 (9) One bailiff for the chief justice of the supreme court
20 who shall have the powers and duties of a court
21 officer and bailiff under section 606-14; one
22 secretary or clerk for each justice of the supreme



1 court, each judge of the intermediate appellate court,
2 and each judge of the circuit court; one secretary for
3 the judicial council; one deputy administrative
4 director of the courts; three law clerks for the chief
5 justice of the supreme court, two law clerks for each
6 associate justice of the supreme court and each judge
7 of the intermediate appellate court, one law clerk for
8 each judge of the circuit court, two additional law
9 clerks for the civil administrative judge of the
10 circuit court of the first circuit, two additional law
11 clerks for the criminal administrative judge of the
12 circuit court of the first circuit, one additional law
13 clerk for the senior judge of the family court of the
14 first circuit, two additional law clerks for the civil
15 motions judge of the circuit court of the first
16 circuit, two additional law clerks for the criminal
17 motions judge of the circuit court of the first
18 circuit, and two law clerks for the administrative
19 judge of the district court of the first circuit; and
20 one private secretary for the administrative director
21 of the courts, the deputy administrative director of
22 the courts, each department head, each deputy or first



1 assistant, and each additional deputy, or assistant
2 deputy, or assistant defined in paragraph (16);

3 (10) First deputy and deputy attorneys general, the
4 administrative services manager of the department of
5 the attorney general, one secretary for the
6 administrative services manager, an administrator and
7 any support staff for the criminal and juvenile
8 justice resources coordination functions, and law
9 clerks;

10 (11) (A) Teachers, principals, vice-principals, complex
11 area superintendents, deputy and assistant
12 superintendents, other certificated personnel,
13 not more than twenty noncertificated
14 administrative, professional, and technical
15 personnel not engaged in instructional work;

16 (B) Effective July 1, 2003, teaching assistants,
17 educational assistants, bilingual/bicultural
18 school-home assistants, school psychologists,
19 psychological examiners, speech pathologists,
20 athletic health care trainers, alternative school
21 work study assistants, alternative school
22 educational/supportive services specialists,



1 alternative school project coordinators, and
2 communications aides in the department of
3 education;

4 (C) The special assistant to the state librarian and
5 one secretary for the special assistant to the
6 state librarian; and

7 (D) Members of the faculty of the University of
8 Hawaii, including research workers, extension
9 agents, personnel engaged in instructional work,
10 and administrative, professional, and technical
11 personnel of the university;

12 (12) Employees engaged in special, research, or
13 demonstration projects approved by the governor;

14 (13) Positions filled by inmates, kokuas, patients of state
15 institutions, persons with severe physical or mental
16 handicaps participating in the work experience
17 training programs, and students and positions filled
18 through federally funded programs that provide
19 temporary public service employment such as the
20 federal Comprehensive Employment and Training Act of
21 1973;



- 1 (14) A custodian or guide at Iolani Palace, the Royal
- 2 Mausoleum, and Hulihee Palace;
- 3 (15) Positions filled by persons employed on a fee,
- 4 contract, or piecework basis, who may lawfully perform
- 5 their duties concurrently with their private business
- 6 or profession or other private employment and whose
- 7 duties require only a portion of their time, if it is
- 8 impracticable to ascertain or anticipate the portion
- 9 of time to be devoted to the service of the State;
- 10 (16) Positions of first deputies or first assistants of
- 11 each department head appointed under or in the manner
- 12 provided in section 6, article V, of the Hawaii state
- 13 constitution; three additional deputies or assistants
- 14 either in charge of the highways, harbors, and
- 15 airports divisions or other functions within the
- 16 department of transportation as may be assigned by the
- 17 director of transportation, with the approval of the
- 18 governor; four additional deputies in the department
- 19 of health, each in charge of one of the following:
- 20 behavioral health, environmental health, hospitals,
- 21 and health resources administration, including other
- 22 functions within the department as may be assigned by



1 the director of health, with the approval of the
2 governor; an administrative assistant to the state
3 librarian; and an administrative assistant to the
4 superintendent of education;

5 (17) Positions specifically exempted from this part by any
6 other law; provided that all of the positions defined
7 by paragraph (9) shall be included in the position
8 classification plan;

9 (18) Positions in the state foster grandparent program and
10 positions for temporary employment of senior citizens
11 in occupations in which there is a severe personnel
12 shortage or in special projects;

13 (19) Household employees at the official residence of the
14 president of the University of Hawaii;

15 (20) Employees in the department of education engaged in
16 the supervision of students during meal periods in the
17 distribution, collection, and counting of meal
18 tickets, and in the cleaning of classrooms after
19 school hours on a less than half-time basis;

20 (21) Employees hired under the tenant hire program of the
21 Hawaii public housing authority; provided that not
22 more than twenty-six per cent of the authority's work



1 force in any housing project maintained or operated by
2 the authority shall be hired under the tenant hire
3 program;

4 (22) Positions of the federally funded expanded food and
5 nutrition program of the University of Hawaii that
6 require the hiring of nutrition program assistants who
7 live in the areas they serve;

8 (23) Positions filled by severely handicapped persons who
9 are certified by the state vocational rehabilitation
10 office that they are able to perform safely the duties
11 of the positions;

12 (24) The sheriff;

13 (25) A gender and other fairness coordinator hired by the
14 judiciary; [~~and~~]

15 (26) Positions in the Hawaii housing finance and
16 development corporation hired or retained to
17 effectuate part III, subpart K of chapter 201H; and

18 (27) Positions in the Hawaii national guard youth and adult
19 education programs.

20 The director shall determine the applicability of this
21 section to specific positions.



1 Nothing in this section shall be deemed to affect the civil
2 service status of any incumbent as it existed on July 1, 1955."

3 SECTION 7. Section 201H-4, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The corporation may:

6 (1) Sue and be sued;

7 (2) Have a seal and alter the same at pleasure;

8 (3) Make and execute contracts and other instruments
9 necessary or convenient to the exercise of its powers;

10 (4) Employ or retain without regard to chapters 76 and 89,
11 by contract or otherwise, attorneys, investigators,
12 investigator assistants, auditors, accountants,
13 paralegals, consultants, experts, and other
14 professional, technical, and support staff as
15 necessary to promote the effective and efficient
16 implementation of part iii, subpart K;

17 (5) Adopt bylaws and rules in accordance with chapter 91
18 for its organization, internal management, and to
19 carry into effect its purposes, powers and programs;
20 and

21 [~~5~~] (6) Notwithstanding any law to the contrary, establish and
22 collect fees for administrative expenses incurred by



1 the corporation to process applications for loans,
2 grants, services, and real estate documents related to
3 the corporation's functions under this chapter."

4 SECTION 8. Section 201H-12, Hawaii Revised Statutes, is
5 amended by amending subsection (e) to read as follows:

6 "(e) The corporation may contract or sponsor with any
7 county housing authority, or person, or establish pursuant to
8 this chapter, subject to the availability of funds, an
9 experimental or demonstration housing project designed to meet
10 the needs of elders; the disabled; displaced or homeless
11 persons; low- and moderate-income persons; the owners of
12 distressed residential properties in accordance with part III of
13 chapter 201H; teachers or other government employees; or
14 university and college students and faculty."

15 SECTION 9. Section 412:2-105, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§412:2-105 Fees and assessments.** (a) The commissioner
18 may charge an examination fee based upon the cost per hour per
19 examiner for all financial institutions examined by the
20 commissioner or the commissioner's staff. Effective July 1,
21 1995, the hourly fee shall be \$40. After July 1, 1996, the
22 commissioner may establish, increase, decrease, or repeal the



1 hourly fee when necessary pursuant to rules adopted in
2 accordance with chapter 91.

3 (b) In addition to the examination fee, the commissioner
4 may charge any financial institution examined or investigated by
5 the commissioner or the commissioner's staff, additional amounts
6 for travel, per diem, mileage and other reasonable expenses
7 incurred in connection with the examination.

8 (c) The commissioner shall bill the affected financial
9 institution for examination fees and expenses as soon feasible
10 after the close of the examination or investigation. The
11 affected financial institution shall pay the division of
12 financial institutions within thirty days following the billing.
13 All such payments shall be deposited to the compliance
14 resolution fund established pursuant to 26-9(o). All disputes
15 relating to these billings between the affected financial
16 institutions and the commissioner shall be resolved in
17 accordance with the procedures for contested cases under chapter
18 91.

19 (d) The commissioner, by rules adopted in accordance with
20 chapter 91, may set reasonable fee amounts to be collected by
21 the division in connection with its regulatory functions,
22 including without limitation, any fees for renewals,



1 applications, licenses, and charters. Unless otherwise provided
2 by statute, all such fees shall be deposited into the compliance
3 resolution fund established pursuant to section 26-9(o).

4 (e) Commencing on July 1, 2012, the commissioner shall
5 collect from each affected financial institution an assessment
6 equal to \$100 for each mortgage loan secured by residential
7 property in the State of Hawaii issued in accordance with this
8 chapter during the previous fiscal year. The assessment shall
9 be levied on the earnings of the financial institution. The
10 collected surcharge shall be deposited into the distressed
11 residential properties program special fund established pursuant
12 to section 201H- A.

13 (f) A financial institution that fails to make a payment
14 required by this section shall be subject to an administrative
15 fine of not more than \$250 per day for each day it is in
16 violation of this section, which fine, together with the amount
17 due under this section, may be recovered pursuant to section
18 412:2-611 and shall be deposited into the compliance resolution
19 fund established pursuant to section 26-9(o) [~~-~~]; provided that
20 any fine levied for the non-payment of the surcharge required
21 pursuant to subsection (e) shall be deposited into the



1 distressed residential properties program special fund
2 established pursuant to section 201H- A."

3 SECTION 10. The attorney general shall transfer \$8,000,000
4 for fiscal year 2012-2013, in other funds received as part of
5 the multi-state settlement agreement with mortgage lenders, to
6 the distressed residential properties program special fund
7 established pursuant to section 201H- A, Hawaii Revised
8 Statutes.

9 SECTION 11. Notwithstanding any law to the contrary, the
10 director of finance shall deposit into the distressed
11 residential properties program special fund all federal moneys
12 received by the State from the American Recovery and
13 Reinvestment Act of 2009 that were not appropriated, expended,
14 allotted, nor encumbered on July 2, 2012; provided that if the
15 federal funds to be deposited includes the statutory authority
16 to issue bonds, the director of finance shall sell the bonds at
17 its earliest convenience and deposit the proceeds into the
18 distressed residential properties special fund; and provided
19 further that if the deposit of any funds may jeopardize the
20 receipt of any other federal funds, those fund shall be exempted
21 from this section.

22 **PART III**



1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect upon its approval;
4 provided that part II of this Act shall take effect on July 1,
5 2012.

