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A BILL FOR AN ACT

RELATING TO THE MORTGAGE LOAN RECOVERY FUND.

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

1 SECTION 1. Section 454F-41, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The commissioner shall establish and maintain a fund  
4 that shall be known as the mortgage loan recovery fund [~~from~~  
5 ~~which any person~~] to compensate persons aggrieved by [~~an~~] a  
6 licensee, as follows:

7 (1) Any person aggrieved by a licensee's act,  
8 representation, transaction, or conduct [~~of a~~  
9 ~~licensee~~] involving fraud, misrepresentation, or  
10 deceit in violation of this chapter may recover, by  
11 order or final judgment of the circuit court or  
12 district court of the county where the violation  
13 occurred, an amount of ten per cent of the residential  
14 mortgage loan, but not more than \$150,000, including  
15 court costs and fees as set by law and reasonable  
16 attorney fees as determined by the court, for damages  
17 sustained by the fraud, misrepresentation, or deceit  
18 of a licensee; or



S.B. NO. 2879

**Report Title:**

Mortgage Loan Recovery Fund; Restitution; Chapter 454F

**Description:**

Expands the pool of persons eligible to receive restitution from the Mortgage Loan Recovery Fund.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE MORTGAGE LOAN RECOVERY FUND.

PURPOSE: To expand the pool of persons eligible to receive restitution from the Mortgage Loan Recovery Fund.

MEANS: Amend section 454F-41(a), Hawaii Revised Statutes.

JUSTIFICATION: Currently, only persons who hold a judgment against a licensee for fraud, deceit, or misrepresentation and a court order for payment from the Mortgage Loan Recovery Fund are eligible to receive payment from the fund. This bill expands the pool of persons eligible to receive restitution from the fund to include those persons the Commissioner of Financial Institutions has determined are entitled to restitution based on the Department of Commerce and Consumer Affairs' Division of Financial Institution's (DFI) examination or investigation of the licensee. At the present time, the DFI orders the licensee to pay restitution to the consumer directly but believes there may be circumstances in which payment from the fund may be more beneficial to the consumer, such as where the licensee's prior conduct has caused the consumer to not open correspondence from the licensee or not deposit the check for fear that it is fraudulent.

Impact on the public: By receiving restitution from the DFI, with an accompanying explanation letter, instead of from the licensee, consumers will be more likely to deposit their restitution checks.

Impact on the department and other agencies:  
The DFI may incur increased administrative costs as a result of paying restitution from the Mortgage Loan Recovery Fund.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-104.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2020.