



GOV. MSG. NO. 1355

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

July 06, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 06, 2012, the following bill was signed into law:

SB2763 SD2 HD2 CD1

RELATING TO MORTGAGE LOAN  
ORIGINATION.  
**Act 252 (12)**

  
NEIL ABERCROMBIE  
Governor, State of Hawaii

RECEIVED  
SENATE  
OFFICE OF THE PRESIDENT

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Approved by the Governor

on JUL 6 2012

THE SENATE

TWENTY-SIXTH LEGISLATURE, 2012

STATE OF HAWAII

ACT 252

S.B. NO. 2763  
S.D. 2  
H.D. 2  
C.D. 1

## A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION.

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

SECTION 1. Chapter 454F, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§454F- Mortgage servicer companies; mortgage loan originators.** An employee who performs mortgage loan originator activities for a mortgage servicer company is exempt from registration and licensure as a mortgage loan originator; provided that:

(1) The employee's actions are part of the employee's duties as an employee of the mortgage servicer company; and

(2) The employee only provides mortgage loan originator services with respect to a residential mortgage loan modification.

**§454F- Nonprofit organizations; mortgage loan originators.** (a) An employee who performs mortgage loan originator activities for a nonprofit organization is exempt



1 from registration and licensure as a mortgage loan originator;  
2 provided that:

3 (1) The employee's actions are part of the employee's  
4 duties as an employee of the nonprofit organization;

5 (2) The employee only provides mortgage loan originator  
6 services with respect to residential mortgage loans  
7 with terms favorable to the borrower; and

8 (3) The nonprofit organization registers with the  
9 Nationwide Mortgage Licensing System and Registry.

10 (b) The commissioner shall periodically examine the books  
11 and activities of nonprofit organizations as defined in section  
12 454F-1 and shall revoke an organization's registration as a  
13 nonprofit organization with the Nationwide Mortgage Licensing  
14 System and Registry if the nonprofit organization fails to meet  
15 the requirements to be a nonprofit organization.

16 (c) In determining whether a residential mortgage loan has  
17 terms favorable to the borrower, the commissioner shall examine:

18 (1) The interest rate that the home loan would carry;

19 (2) The charges that are imposed on the borrower for  
20 origination, application, closing, and other costs;

21 (3) Whether the mortgage includes any predatory  
22 characteristics;



1        (4) The borrower's ability to repay the loan; and

2        (5) The term of the mortgage.

3        **§454F- Sole proprietorships; fees.** Every mortgage loan  
4 originator company that consists of a single individual not  
5 exempt under section 454F-2 who engages in the business of a  
6 mortgage loan originator as a sole proprietorship shall be  
7 reimbursed by the division for the fees paid for the state  
8 mortgage loan originator's initial application and annual  
9 license renewal fees."

10        SECTION 2. Section 454F-1, Hawaii Revised Statutes, is  
11 amended as follows:

12        1. By adding four new definitions to be appropriately  
13 inserted and to read:

14        "Housing finance agency" means any authority, including  
15 any nonprofit organization:

16        (1) That helps meet the affordable housing needs of the  
17 residents of the State;

18        (2) That is supervised directly or indirectly by the  
19 State;

20        (3) That is subject to audit and review by the State; and

21        (4) Whose activities make it eligible to be a member of  
22 the National Council of State Housing Agencies.



1 "Mortgage servicer company" means a mortgage servicer  
2 company licensed under chapter 454M.

3 "Nonprofit organization" means an organization that:

4 (1) Has the status of a tax-exempt organization under  
5 section 501(c)(3) of the Internal Revenue Code of  
6 1986, as amended;

7 (2) Promotes affordable housing or provides homeownership  
8 education or similar services;

9 (3) Conducts its activities in a manner that serves public  
10 or charitable purposes, rather than commercial  
11 purposes;

12 (4) Receives funding and revenue and charges fees in a  
13 manner that does not incentivize it or its employees  
14 to act other than in the best interests of its  
15 clients;

16 (5) Compensates its employees in a manner that does not  
17 incentivize employees to act other than in the best  
18 interests of its clients; and

19 (6) Provides, or identifies for the borrower, residential  
20 mortgage loans with terms favorable to the borrower  
21 and comparable to mortgage loans and housing



1           assistance provided under government housing  
2           assistance programs.

3           "Residential mortgage loan modification" means:

4           (1) Modification of existing residential mortgage loans  
5           which generally includes a change in interest,  
6           principal, or term of loan; or

7           (2) The processing of the approval of loan assumptions.

8           "Residential mortgage loan modification" does not include  
9           origination of mortgage loans."

10           2. By amending the definitions of "Nationwide Mortgage  
11           Licensing System" and "sponsor" to read:

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

21           "Sponsor" means to [create]:



(1) Create a relationship through the Nationwide Mortgage Licensing System [~~for the purpose of appropriately supervising a mortgage loan originator's activities.~~];

and

(2) Appropriately supervise a mortgage loan originator's activities."

SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All mortgage loan originators, mortgage loan originator companies, exempt sponsoring mortgage loan originator companies, nonprofit organizations, mortgage servicer companies, and ~~[any]~~ every other person in this State that originates a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System."

SECTION 4. Section 454F-1.6, Hawaii Revised Statutes, is amended to read as follows:

**"[~~454F-1.6~~] Presumption of control.** An individual is presumed to control a mortgage loan originator company if that individual is a director, general partner, managing ~~[director,~~ member, or executive officer of that mortgage loan originator company."





SECTION 5. Section 454F-1.7, Hawaii Revised Statutes, is amended to read as follows:

**"[~~f~~]~~\$454F-1.7~~[~~f~~] Duties of qualified individual and branch manager.** (a) A qualified individual shall have the duty to manage and supervise the mortgage loan origination activities of a licensed mortgage loan originator company's principal office and the licensed mortgage loan originators located at or working out of ~~[that location.]~~ the principal office and all company branch offices. A qualified individual shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(b) A branch manager shall have the duty to directly manage and supervise a licensed mortgage loan originator company's branch office and the licensed mortgage loan originators located at or working out of that location. A branch manager shall be physically present in the branch office and shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(c) A qualified individual for a mortgage loan originator company ~~[and a branch manager for a branch office]~~ shall be responsible for:

- (1) Supervising the maintenance and accounting of client trust accounts and disbursements from those accounts;



1 (2) Supervising the maintenance of all records, contracts,  
2 and documents of the mortgage loan originator company;

3 (3) Supervising all mortgage loan originator agreements  
4 and mortgage loan documents and the handling of these  
5 documents by the licensed mortgage loan originators  
6 who are employed by or are independent contractors of  
7 the mortgage loan originator company;

8 (4) Supervising all licensed mortgage loan originators who  
9 are employed by or are independent contractors of the  
10 mortgage loan originator company;

11 (5) Developing and enforcing policies and procedures  
12 relating to the handling of residential mortgage loan  
13 transactions and the professional conduct of the  
14 licensed mortgage loan originators and other staff;

15 (6) Developing and monitoring compliance with a policy on  
16 continuing education requirements for all licensed  
17 mortgage loan originators who are employed by or are  
18 independent contractors of the mortgage loan  
19 originator company pursuant to the requirements of  
20 this chapter and the rules of the commissioner;

21 (7) Ensuring that the licenses of all mortgage loan  
22 originators who are employed by or are independent



1 contractors of the mortgage loan originator company,  
2 and the license of the mortgage loan originator  
3 company are current and active, and that all required  
4 fees are timely paid to the mortgage loan recovery  
5 fund;

6 (8) Establishing and conducting a training program for all  
7 licensed mortgage loan originators who are employed by  
8 or are independent contractors of the mortgage loan  
9 originator company;

10 (9) Ensuring that all licensed mortgage loan originators  
11 who are employed by or are independent contractors of  
12 the mortgage loan originator company are provided  
13 adequate information and training on the latest  
14 amendments to licensing laws and rules and any other  
15 applicable laws and rules;

16 (10) Notifying the commissioner of the termination of the  
17 employment or independent contractor relationship of  
18 licensed mortgage loan originators who were employed  
19 by or were independent contractors of the mortgage  
20 loan originator company upon the termination of  
21 employment or the independent contractor relationship;  
22 and



1 (11) Ensuring that the records, loan documents, and  
2 agreements including mortgage loan originator  
3 agreements are retained for seven years on paper or in  
4 electronic format by the mortgage loan originator  
5 company.

6 (d) A branch manager for a branch office shall be  
7 responsible for supervising:

8 (1) The maintenance of all records, contracts, and  
9 documents of the mortgage loan originator company  
10 branch office;

11 (2) All mortgage loan originator agreements and mortgage  
12 loan documents and the handling of these documents by  
13 the licensed mortgage loan originators or independent  
14 contractors located at or working out of the mortgage  
15 loan originator company branch office; and

16 (3) All licensed mortgage loan originators who are  
17 employed by, or are independent contractors of, the  
18 mortgage loan originator company and who are located  
19 at or working out of the mortgage loan originator  
20 company branch office."

21 SECTION 6. Section 454F-1.8, Hawaii Revised Statutes, is  
22 amended to read as follows:



1            "[+]§454F-1.8[+]    Sponsorship by mortgage loan

2    [~~originator~~] originator company [~~or~~], exempt sponsoring  
3    mortgage loan originator company[~~or~~], or nonprofit organization.

4    All mortgage loan originators shall be sponsored by a mortgage  
5    loan originator company [~~or by~~], an exempt sponsoring mortgage  
6    loan originator company[~~or~~], or a nonprofit organization. At no  
7    time shall a mortgage loan originator be sponsored by more than  
8    one Hawaii licensed mortgage loan originator company, exempt  
9    sponsoring mortgage loan originator company, or nonprofit  
10   organization."

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

13            "**§454F-2 Exemptions.** This chapter shall not apply to the  
14    following:

- 15            (1)    An exempt registered mortgage loan originator[~~or~~] when  
16                    acting for an insured depository institution[~~or a~~  
17                    ~~subsidiary of an insured depository institution~~  
18                    ~~regulated by a federal banking agency~~,] or an  
19                    institution regulated by the Farm Credit  
20                    Administration;



- 1           (2) Any individual who offers or negotiates terms of a  
2           residential mortgage loan with, or on behalf of, an  
3           immediate family member of the individual;
- 4           (3) Any individual who offers or negotiates terms of a  
5           residential mortgage loan secured by a dwelling that  
6           served as the individual's residence;
- 7           (4) A licensed attorney who negotiates the terms of a  
8           residential mortgage loan on behalf of a client as an  
9           ancillary matter to the attorney's representation of  
10          the client unless the attorney is compensated by a  
11          lender, a mortgage loan originator company, or other  
12          mortgage loan originator or by an agent of a lender,  
13          mortgage loan originator company, or other mortgage  
14          loan originator;
- 15          (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 loan originator company, or  
19          other mortgage loan originator or by an agent of the  
20          lender, mortgage loan originator company, or other  
21          mortgage loan originator;



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

(7) An exempt sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter; [~~or~~]

(8) An insured depository institution[~~-~~];

(9) An institution regulated by the Farm Credit Administration; or

(10) Employees of government agencies or of housing finance agencies who act as mortgage loan originators."

SECTION 8. Section 454F-4.9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) An application for licensure pursuant to this chapter shall be considered abandoned if an applicant fails to provide evidence of continued efforts to complete the licensing application process for [six consecutive months-] thirty days. The thirty-day period shall begin on the last day of contact with the division by the applicant. The commissioner may extend this period for good cause. No refund of filing fees shall be provided to an applicant for an abandoned application. The



1 commissioner shall not be required to act on any abandoned  
2 application and is not required to retain abandoned applications  
3 or supporting documents. The commissioner may withdraw  
4 abandoned applications from the Nationwide Mortgage Licensing  
5 System.

6 (b) For purposes of this section, failure to provide  
7 evidence of continued efforts to complete the licensing process  
8 includes:

9 (1) Failure to submit required documents and other  
10 information requested by the commissioner within [~~six~~  
11 ~~months~~] thirty days from the last date the documents  
12 or other information were requested; or

13 (2) Failure to provide the commissioner with any written  
14 communication indicating that the applicant is  
15 attempting to complete the licensing process for a  
16 period of [~~six months~~] thirty days."

17 SECTION 9. Section 454F-8, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) The minimum standards for license renewal for  
20 mortgage loan originator companies shall include the following:





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

(2) The mortgage loan originator company's [~~branch manager~~ and] qualified individual and every branch manager have satisfied the minimum standards for license renewal; and

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

SECTION 10. Section 454F-22, Hawaii Revised Statutes, is amended to read as follows:

**"§454F-22 Mortgage loan originator, mortgage loan originator company, and exempt sponsoring mortgage loan originator company fees.** (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$500;
- (2) Annual license renewal fee of \$300;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and



(5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

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

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

(A) Initial application fee of \$900;

(B) Annual license renewal fee of \$600;

(C) Reinstatement fee of \$100;

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

(E) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and

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

(A) Initial application fee of \$250;

(B) Annual license renewal fee of \$100;

(C) Reinstatement fee of \$100; and



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

2 (c) An exempt sponsoring mortgage loan originator company  
3 shall pay the following [~~fees~~] fees to maintain a valid  
4 registration in the Nationwide Mortgage Licensing System[+] and  
5 Registry:

6 (1) Initial registration fee of \$200;

7 (2) Annual registration renewal fee of \$150; and

8 (3) Late fee of \$25 per day.

9 (d) A nonprofit organization shall pay the following fees  
10 to maintain a valid registration as a nonprofit organization in  
11 the Nationwide Mortgage Licensing System and Registry:

12 (1) Initial registration fee of \$200;

13 (2) Annual registration renewal fee of \$150; and

14 (3) Late fee of \$25 per day.

15 [~~(d)~~] (e) In addition to fees charged by the Nationwide  
16 Mortgage Licensing System, a licensee shall pay to the  
17 commissioner a fee of \$50 for each of the following amendments  
18 to information provided to the Nationwide Mortgage Licensing  
19 System that require the review of the commissioner:

20 (1) Change of physical location[~~, including address~~  
21 ~~change~~] or mailing address for branch office or  
22 principal place of business;



- 1       (2) Addition or deletion of a "d/b/a" assignment;  
2       (3) Change of mortgage loan originator's sponsor;  
3       (4) Change of qualified individual;  
4       ~~[(3)]~~ (5) Change of branch manager; [ex] and  
5       ~~[(4)]~~ (6) Change of mortgage loan originator company's  
6       legal name.

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

9       ~~[(e)]~~ (f) The fees established by this section are  
10 nonrefundable 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 a credit reporting agency used by the  
15 Nationwide Mortgage Licensing System.

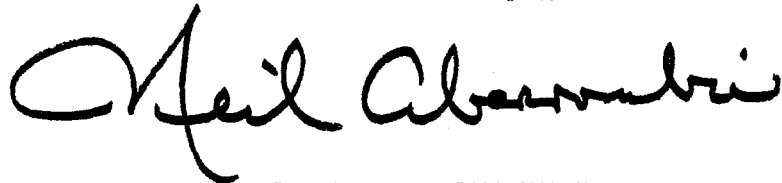
16       ~~[(f)]~~ (g) The commissioner may establish, by rule pursuant  
17 to chapter 91, any other fees or charges necessary for the  
18 administration of this chapter."

19       SECTION 11. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21       SECTION 12. This Act shall take effect on July 1, 2012.

S.B. NO. 2763  
S.D. 2  
H.D. 2  
C.D. 1

APPROVED this 6 day of JUL, 2012

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII