

JAN 20 2017

A BILL FOR AN ACT

RELATING TO APPRAISAL MANAGEMENT COMPANIES.

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

1 SECTION 1. The legislature finds that in 2008, the
2 nation's economy was shaken by the collapse of the sub-prime
3 mortgage market, which threatened the country's financial
4 system. While investigating the causes that led to this
5 collapse, Congress determined one cause was the use of
6 appraisals that did not conform to generally accepted standards
7 of independence, objectivity, and impartiality. Extensive abuse
8 was also discovered in the mortgage origination industry, with
9 appraisers' close business relationships with lenders and the
10 use of biased appraisals to facilitate the lending process found
11 to be contributing factors.

12 In response, Congress enacted the Dodd-Frank Wall Street
13 Reform and Consumer Protection Act, Pub. L. No. 111-203 (Dodd-
14 Frank Act). The Dodd-Frank Act helped restore independence to
15 the appraisal process by separating the lending process and
16 appraisal functions and requiring these functions to be
17 autonomous.



1 The legislature further finds that appraisal management
2 companies, commonly referred to as AMCs, have proliferated as a
3 result of the Dodd-Frank Act. One way of maintaining
4 independence between the appraisal function and the loan
5 origination function of an appraisal process is to have an
6 intermediary separate from the lender that orders and receives
7 appraisals, a function that has been fulfilled by the use of
8 appraisal management companies.

9 Section 1473 of the Dodd-Frank Act requires five federal
10 regulatory agencies to jointly promulgate rules that establish
11 minimum requirements to be applied by states in the registration
12 and supervision of appraisal management companies. The
13 appraisal management companies final rule (AMC Final Rule) was
14 published in the Federal Register on June 9, 2015, (80 Federal
15 Register 32657 et seq.) and became effective August 10, 2015.
16 The AMC Final Rule outlines certain minimum registration and
17 oversight requirements for each state to adopt. While the AMC
18 Final Rule does not force a state to enact these minimum
19 requirements, it specifies that if a state fails to do so by
20 August 10, 2018, certain non-federally regulated appraisal
21 management companies will be barred from providing appraisal



1 management services for federally related transactions in that
2 state.

3 The legislature additionally finds that Hawaii's failure to
4 adopt regulation of appraisal management companies that conform
5 with the AMC Final Rule could have unintended and adverse
6 consequences for Hawaii consumers and others involved in the
7 residential appraisal process in the State. The legislature
8 notes that a large source of Hawaii's funding for residential
9 mortgages comes from outside the State, through either direct
10 lending or secondary market investments, which frequently use
11 appraisal management companies. Furthermore, if conforming
12 legislation is not enacted, there is a risk that direct lending
13 for residential mortgages from outside the State could come to a
14 standstill, as appraisal orders could not be economically placed
15 by mainland lenders and Hawaii is too small a market for a large
16 lender to customize a system for the State. There is also a
17 risk that mortgage money may not be available to all people in
18 the State who need it. This potential restriction of available
19 mortgage funds could make home affordability even more elusive
20 for residents of Hawaii and could adversely impact home
21 ownership for many families.



1 The legislature also finds that at least forty other states
2 have acted to preserve the flow of capital into their
3 communities for residential lending and have enacted legislation
4 in conformance with the AMC Final Rule. The legislature
5 concludes that it is necessary for Hawaii to also enact
6 legislation in conformity with the AMC Final Rule prior to the
7 August 10, 2018, deadline.

8 Accordingly, the purpose of this Act is to establish a
9 regulatory framework for appraisal management companies in
10 Hawaii, which conforms with the minimum regulatory requirements
11 of the AMC Final Rule and the Dodd-Frank Act.

12 SECTION 2. Chapter 466K, Hawaii Revised Statutes, is
13 amended by adding a new part to be appropriately designated and
14 to read as follows:

15 **"PART . APPRAISAL MANAGEMENT COMPANIES**

16 **§466K-A Findings and purpose.** The legislature finds that
17 the regulation of appraisal management companies is essential to
18 protect consumers. The legislature further finds that it is
19 necessary to establish a regulatory framework for appraisal
20 management companies in the State in conformity with the
21 requirements of the Dodd-Frank Wall Street Reform and Consumer



1 Protection Act, Pub. L. No. 111-203, and the final regulations
2 published on June 9, 2015, at 80 Federal Register 32657 et seq.
3 The purpose of this part is to establish minimum requirements
4 for the regulation of certain non-federally regulated appraisal
5 management companies.

6 **§466K-B Definitions.** As used in this part unless the
7 context otherwise requires:

8 "Affiliate" means any company that controls, is controlled
9 by, or is under control of another company, as defined under
10 title 12 United States Code section 1841, or any successor
11 federal statute.

12 "AMC national registry" means the registry of state-
13 registered appraisal management companies and federally
14 regulated appraisal management companies maintained by the
15 Appraisal Subcommittee.

16 "Appraisal management company" means a person that:

- 17 (1) Provides appraisal management services to creditors or
18 secondary mortgage market participants, including
19 affiliates;
- 20 (2) Provides appraisal management services in connection
21 with valuing a consumer's principal dwelling as



1 security for a consumer credit transaction or
2 incorporating these transactions into securitizations;
3 and

4 (3) Within a twelve-month calendar year, beginning January
5 1 of each year and ending on December 31 of each year,
6 oversees an appraiser panel of more than fifteen
7 state-certified or state-licensed appraisers in a
8 state or twenty-five or more state-certified or state-
9 licensed appraisers in two or more states, as
10 described in section 466K-E.

11 "Appraisal management company" does not include a department or
12 division of an entity that provides appraisal management
13 services only to that entity.

14 "Appraisal management services" means one or more of the
15 following:

16 (1) Recruiting, selecting, and retaining appraisers;

17 (2) Contracting with state-certified or state-licensed
18 appraisers to perform appraisal assignments;

19 (3) Managing the process of having an appraisal performed,
20 including providing completed appraisal reports to
21 creditors and secondary market participants;



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1 collecting fees from creditors and secondary market
2 participants for services provided; and paying
3 appraisers for services performed; and

4 (4) Reviewing and verifying the work of appraisers.

5 "Appraiser panel" means a network, list, or roster of
6 licensed or certified appraisers approved by an appraisal
7 management company to perform appraisals as independent
8 contractors for the appraisal management company. Appraisers on
9 an appraisal management company's "appraiser panel" include:

10 (1) Appraisers accepted by the appraisal management
11 company for consideration for future appraisal
12 assignments in covered transactions or for secondary
13 mortgage market participants in connection with
14 covered transactions; and

15 (2) Appraisers engaged by the appraisal management company
16 to perform one or more appraisals in covered
17 transactions or for secondary mortgage market
18 participants in connection with covered transactions.

19 For purposes of this part, an appraiser is an independent
20 contractor if the appraiser is treated as an independent



1 contractor by the appraisal management company for purposes of
2 federal income taxation.

3 "Appraisal review" means the process of developing and
4 communicating an opinion about the quality of another
5 appraiser's work that was performed as part of an appraisal
6 assignment related to the appraiser's data collection, analysis,
7 opinions, conclusions, estimate of value, or compliance with the
8 Uniform Standards of Professional Appraisal Practice.

9 "Appraisal review" does not include:

- 10 (1) A general examination for grammatical, typographical,
11 or other similar errors; or
12 (2) A general examination for completeness, including
13 regulatory or client requirements as specified in the
14 agreement process that does not communicate an opinion
15 of value.

16 "Appraisal Subcommittee" means the Appraisal Subcommittee
17 of the Federal Financial Institutions Examination Council
18 created pursuant to Title XI of the federal Financial
19 Institutions Reform, Recovery, and Enforcement Act of 1989.

20 "Appraisal review committee" means the advisory committee
21 established pursuant to section 466K-3(6).



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1 "Consumer credit" means credit offered or extended to a
2 consumer primarily for personal, family, or household purposes.

3 "Controlling person" means:

4 (1) An officer, director, or owner of greater than a ten
5 per cent interest of a corporation, partnership, or
6 other business entity seeking to act as an appraisal
7 management company in the State;

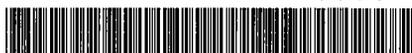
8 (2) An individual employed, appointed, or authorized by an
9 appraisal management company who has the authority to:

10 (A) Enter a contractual relationship with other
11 persons for performance of services requiring
12 registration as an appraisal management company;
13 and

14 (B) Enter agreements with appraisers for the
15 performance of appraisals; or

16 (3) An individual who possesses, directly or indirectly,
17 the power to direct or cause the direction of the
18 management or policies of an appraisal management
19 company.

20 "Covered transaction" means any consumer credit transaction
21 secured by the consumer's principal dwelling.



1 "Creditor" means a person who regularly extends consumer
2 credit that is subject to a finance charge or is payable by
3 written agreement in more than four installments (not including
4 a down payment) and to whom the obligation is initially payable,
5 either on the face of the note or contract, or by agreement when
6 there is no note or contract.

7 A person regularly extends consumer credit if:

- 8 (1) The person extended credit (other than credit subject
9 to the requirements of title 12 Code of Federal
10 Regulations section 1026.32) more than five times for
11 transactions secured by a dwelling in the preceding
12 calendar year. If a person did not meet these
13 numerical standards in the preceding calendar year,
14 the numerical standards shall be applied to the
15 current calendar year; or
- 16 (2) In any twelve-month period, the person extends more
17 than one credit extension that is subject to the
18 requirements of title 12 Code of Federal Regulations
19 section 1026.32 or one or more such credit extensions
20 through a mortgage broker.



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Director" means the director of commerce and consumer
4 affairs.

5 "Dwelling" means a residential structure that contains one
6 to four units, whether or not that structure is attached to real
7 property. "Dwelling" includes an individual condominium unit,
8 cooperative unit, mobile home, and trailer, if it is used as a
9 residence. A consumer can have only one principal dwelling at a
10 time. A vacation or other second home is not considered a
11 principal dwelling; provided that for purposes of this
12 definition, if a consumer buys or builds a new dwelling that
13 will become the consumer's principal dwelling within a year or
14 upon the completion of construction, the new dwelling shall be
15 considered the principal dwelling.

16 "Federally regulated appraisal management company" means an
17 appraisal management company that is owned and controlled by an
18 insured depository institution, as defined in title 12 United
19 States Code section 1813, and regulated by the Office of the
20 Comptroller of the Currency, the Board of Governors of the



1 Federal Reserve System, or the Federal Deposit Insurance
2 Corporation.

3 "Federally related transaction" means any real estate-
4 related financial transaction that involves an insured
5 depository institution regulated by the Office of the
6 Comptroller of the Currency, Board of Governors of the Federal
7 Reserve System, Federal Deposit Insurance Corporation, or
8 National Credit Union Administration, and that requires the
9 services of an appraiser under the interagency appraisal rules.

10 "Person" means a natural person or an organization,
11 including a corporation, partnership, proprietorship,
12 association, cooperative, estate, trust, or government unit.

13 "Real estate-related financial transaction" means any
14 transaction involving the sale, lease, purchase, investment in,
15 or exchange of real property, including interests in property or
16 the financing thereof, including the refinancing of real
17 property or interests in real property and the use of real
18 property or interests in property as security for a loan or
19 investment, including mortgage-backed securities.

20 "Secondary mortgage market participant" means a guarantor
21 or insurer of mortgage-backed securities or an underwriter or



1 issuer of mortgage-backed securities. "Secondary mortgage
2 market participant" only includes an individual investor in a
3 mortgage-backed security if that investor also serves in the
4 capacity of a guarantor, insurer, underwriter, or issuer for the
5 mortgage-backed security.

6 "Uniform Standards of Professional Appraisal Practice"
7 shall have the same meaning as in section 466K-5.

8 **§466K-C Appraisal management company registration program.**

9 There is established an appraisal management company
10 registration program within the department, to be administered
11 by the director.

12 **§466K-D Powers and duties of the director.** In addition to
13 any other powers and duties authorized by law, the director
14 shall have the following powers and duties:

- 15 (1) Review and approve or deny an appraisal management
16 company's application for initial registration;
- 17 (2) Renew or deny an appraisal management company's
18 registration periodically;
- 19 (3) Examine the books and records of an appraisal
20 management company operating in the State and require



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- 1 the appraisal management company to submit reports,
2 information, and documents;
- 3 (4) Verify that the appraisers on the appraisal management
4 company's appraiser panel hold valid state licenses or
5 certifications, as applicable;
- 6 (5) Conduct investigations of appraisal management
7 companies to assess potential violations of applicable
8 appraisal-related laws, regulations, or orders;
- 9 (6) Discipline, suspend, terminate, or deny renewal of the
10 registration of an appraisal management company that
11 violates applicable appraisal-related laws,
12 regulations, or orders;
- 13 (7) Report an appraisal management company's violation of
14 applicable appraisal-related law, regulations, or
15 orders, as well disciplinary and enforcement actions
16 and other relevant information about an appraisal
17 management company's operations, to the Appraisal
18 Subcommittee;
- 19 (8) Adopt, amend, and repeal rules, pursuant to chapter
20 91, as may be necessary to establish the appraisal



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1 management company registration program and implement,
2 administer, and enforce this part; and

3 (9) Appoint members to the appraiser review committee
4 established pursuant to section 466K-3(6), to assist
5 with the implementation of this part.

6 **§466K-E Appraiser panel; annual size calculation.** (a)

7 For purposes of determining whether an appraisal management
8 meets the size requirement of an appraisal management company,
9 as that term is defined in section 466K-B, an appraiser shall be
10 deemed part of the appraisal management company's appraiser
11 panel as of the earliest date on which the appraisal management
12 company:

13 (1) Accepts the appraiser for the appraisal management
14 company's consideration for future appraisal
15 assignments in covered transactions or for secondary
16 mortgage market participants in connection with
17 covered transactions; or

18 (2) Engages the appraiser to perform one or more
19 appraisals on behalf of a creditor for covered
20 transactions or a secondary mortgage market
21 participant in connection with covered transactions.



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1 (b) An appraiser who is deemed part of the appraisal
2 management company's appraiser panel pursuant to subsection (a)
3 shall be deemed to remain on the appraiser panel until the date
4 on which the appraisal management company:

5 (1) Sends written notice to the appraiser removing the
6 appraiser from the appraiser panel, with an
7 explanation of the appraisal management company's
8 action; or

9 (2) Receives written notice from the appraiser asking to
10 be removed from the appraiser panel or notice of the
11 death or incapacity of the appraiser.

12 (c) If an appraiser is removed from an appraisal
13 management company's appraiser panel pursuant to subsection (b),
14 and the appraisal management company subsequently accepts the
15 appraiser for consideration for future assignments or engages
16 the appraiser at any time during the twelve months after the
17 appraiser's removal:

18 (1) The removal shall be deemed not to have occurred; and

19 (2) The appraiser shall be deemed to have been part of the
20 appraisal management company's appraiser panel without
21 interruption.



1 **§466K-F Registration required.** (a) No person may
2 directly or indirectly engage or attempt to engage in business
3 as an appraisal management company; directly or indirectly
4 perform or attempt to perform appraisal management services; or
5 advertise or hold oneself out as engaging in or conducting
6 business as an appraisal management company without first being
7 registered pursuant to this part.

8 (b) An appraisal management company shall:

- 9 (1) Register with the appraisal management company
10 registration program administered by the department;
- 11 (2) Engage only state-licensed or state-certified
12 appraisers for federally related transactions in
13 conformity with any federally related transaction
14 regulations;
- 15 (3) Establish and comply with processes and controls
16 reasonably designed to ensure that the appraisal
17 management company, in engaging an appraiser, selects
18 an appraiser who is independent of the transaction and
19 has the requisite education, expertise, and experience
20 necessary to competently complete the appraisal



1 assignment for the particular market and property
2 type;

3 (4) Direct an appraiser to perform the assignment in
4 accordance with the Uniform Standards of Professional
5 Appraisal Practice; and

6 (5) Establish and comply with processes and controls
7 reasonably designed to ensure that the appraisal
8 management company conducts its appraisal management
9 services in accordance with the requirements of
10 section 129E(a) through 129E(i) of the Truth in
11 Lending Act, title 15 United States Code sections
12 1639(a) through 1639(i), and regulations adopted
13 thereunder.

14 (c) This section shall not apply to appraisal management
15 companies that are owned and controlled by an insured depository
16 institution and regulated by the Consumer Financial Protection
17 Bureau, the Federal Housing Finance Agency, the Board of
18 Governors of the Federal Reserve System, the Federal Deposit
19 Insurance Corporation, or the National Credit Union
20 Administration.



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1 **§466K-G Registration process.** An applicant for
2 registration under this part shall file an application for
3 registration with the director on a form prescribed by the
4 director and pay a fee established by the director. The form
5 shall require any information necessary to determine eligibility
6 for registration.

7 **§466K-H Criminal history record checks.** (a) The
8 application submitted pursuant to section 466K-G shall contain
9 the information and authorizations necessary to conduct a
10 criminal history record check in accordance with section 846-2.7
11 for:

12 (1) Each person applying for registration who owns more
13 than ten per cent of an appraisal management company;
14 and

15 (2) Each of the applicant's controlling persons.

16 (b) The information and authorizations shall be
17 accompanied by the appropriate payment of the applicable fee for
18 each record check.

19 **§466K-I Appraisal management company registration numbers.**

20 (a) The director shall issue a unique registration number to
21 each appraisal management company registered in this State.



1 (b) The director shall maintain a list of the appraisal
2 management companies that are registered with the director.

3 (c) An appraisal management company registered in this
4 State shall place its registration number on engagement
5 documents utilized by the appraisal management company to
6 procure appraisal services in this State.

7 **§466K-J Expiration of registration.** Registrations shall
8 expire on December 31 of each odd-numbered year. The expiration
9 date of the registration shall appear on the appraisal
10 management company registration certificate issued to the
11 registrant, and no other notice of its expiration need be given
12 to the registrant.

13 **§466K-K Compliance with the Uniform Standards of**
14 **Professional Appraisal Practice.** As a condition of registration
15 or renewal of registration, each appraisal management company in
16 the State shall certify that the company requires appraisers
17 completing appraisals at the company's request to comply with
18 the Uniform Standards of Professional Appraisal Practice.

19 **§466K-L Consent to service of process.** An applicant for
20 registration under this part that is not domiciled in the State



1 shall complete an irrevocable consent to service of process, in
2 a form approved by the attorney general.

3 **§466K-M Reporting requirements; non-federally regulated**
4 **appraisal management companies.** The director shall collect from
5 each appraisal management company registered or seeking
6 registration in the State all information and fees required by
7 the Appraisal Subcommittee to be submitted to the Appraisal
8 Subcommittee by the State, pursuant to regulations or guidance
9 promulgated by the Appraisal Subcommittee.

10 **§466K-N Reporting requirements; federally regulated**
11 **appraisal management companies; reporting information for**
12 **appraisal management companies.** A federally regulated appraisal
13 management company operating in the State shall report to the
14 director the information required to be submitted by the State
15 to the Appraisal Subcommittee, pursuant to the Appraisal
16 Subcommittee's policies regarding the determination of the AMC
17 national registry fee. These reporting requirements shall
18 include:

- 19 (1) A notice of intent to operate in the State;
- 20 (2) Information related to whether the appraisal
- 21 management company is owned in whole or in part,



1 directly or indirectly, by any person who has had an
2 appraiser license or certification refused, denied,
3 cancelled, surrender in lieu of revocation, or revoked
4 in any state for a substantive cause, as determined by
5 the Appraisal Subcommittee; and

- 6 (3) If a person has had such action taken on the person's
7 appraisal license or certification, the director shall
8 collect information related to whether the license or
9 certification was revoked for a substantive cause and
10 if the license or certification has been reinstated by
11 the state or states in which the appraiser was
12 licensed or certified.

13 **§466K-0 Owner requirements.** (a) An appraisal management
14 company applying for, holding, or renewing a registration under
15 this part shall not be owned, in whole or in part, directly or
16 indirectly, by any person who has had an appraiser license or
17 certification refused, denied, canceled, surrendered in lieu of
18 revocation, or revoked in any state for a substantive cause, as
19 determined by the appropriate state appraiser certifying and
20 licensing agency; provided that an appraisal management company
21 may be registered under this part if the license or



1 certification of the appraiser with an ownership interest was
2 not revoked for a substantive cause and the license or
3 certification has been reinstated by the state in which the
4 appraiser was licensed or certified.

5 (b) Each person that owns more than ten per cent of an
6 appraisal management company and applies for, holds, or renews a
7 registration under this part shall:

8 (1) Be of good moral character; and

9 (2) Submit to a criminal history record check pursuant to
10 section 466K-H.

11 **§466K-P Controlling person.** An appraisal management
12 company applying for registration or renewal of registration in
13 the State shall designate one controlling person to serve as the
14 main contact for all communication between the department and
15 the company. The controlling person shall:

16 (1) Remain in good standing in the State and in any other
17 state that has at any time issued the controlling
18 person an appraiser license or certification; provided
19 that nothing in this part shall require that a
20 designated controlling person hold or continue to hold



- 1 an appraiser license or certification in any
2 jurisdiction;
- 3 (2) Never have had an appraiser license in this State or
4 any other state refused, denied, canceled, revoked, or
5 surrendered in lieu of a pending disciplinary
6 proceeding in any jurisdiction and not subsequently
7 reinstated or granted;
- 8 (3) Be of good moral character; and
- 9 (4) Submit to a criminal history record check pursuant to
10 section 466K-H.

11 **§466K-Q Appraiser engagement.** Before or at the time of
12 placing an assignment to appraise real property in the State
13 with an appraiser on the appraiser panel of an appraisal
14 management company, the appraisal management company shall
15 verify that the appraiser receiving the assignment holds an
16 appraiser license or certification in good standing in this
17 State.

18 **§466K-R Appraisal review.** Any employee of or independent
19 contractor to an appraisal management company who performs an
20 appraisal review for a property located in this State shall be a
21 licensed or certified appraiser in good standing in the State



1 and any other jurisdiction in which the appraiser is licensed or
2 certified.

3 **§466K-S Verification of licensure or certification.** (a)

4 An appraisal management company registered in the State may not
5 enter any contract or agreement with an appraiser for the
6 performance of appraisals in the State unless the company
7 verifies that the appraiser is licensed or certified in good
8 standing in the State.

9 (b) An appraisal management company seeking registration
10 or renewal of registration in the State shall certify that the
11 company has a system and process in place to verify that an
12 individual added to the appraiser panel of the company for
13 appraisal services holds an appraiser license or certification
14 in good standing in this State.

15 **§466K-T Fee disclosure.** An appraisal management company
16 registered in the State shall not prohibit an independent
17 appraiser who is part of the appraiser panel from recording the
18 fee that the appraiser was paid by the appraisal management
19 company for the performance of an appraisal within the
20 communication of the appraisal.



1 **§466K-U Retention of records.** (a) Each appraisal
2 management company seeking registration or renewal of
3 registration in the State shall certify that the appraisal
4 management company maintains a detailed record of each service
5 request the company receives for appraisals of real property
6 located in the State.

7 (b) An appraisal management company registered in the
8 State shall retain all records required to be maintained under
9 this part for at least five years after the file is submitted to
10 the appraisal management company or at least two years after
11 final disposition of any related judicial proceeding of which
12 the appraisal management company is provided notice, whichever
13 period expires last.

14 (c) All records required to be maintained pursuant to this
15 section shall be made available for inspection by the director,
16 upon reasonable notice given to the appraisal management
17 company.

18 **§466K-V Payments to appraisers.** (a) An appraisal
19 management company shall, except in bona fide cases of breach of
20 contract or substandard performance of services, make payment to
21 an independent appraiser for the completion of an appraisal or



1 valuation assignment within forty-five days of the date on which
2 the appraiser transmits or otherwise provides the completed
3 appraisal or valuation assignment to the appraisal management
4 company or the company's assignee, unless a mutually agreed-upon
5 alternate arrangement has been previously established.

6 (b) An appraisal management company seeking registration
7 or renewal of registration shall certify that the company will
8 require appraisals to be conducted independently, as required by
9 the appraisal independence standards under section 129E of the
10 Truth in Lending Act, title 15 United States Code section
11 1639(e), including the requirement that a customary and
12 reasonable fee be paid to an independent appraiser who completes
13 an appraisal in connection with a consumer credit transaction
14 secured by the principal dwelling.

15 **§466K-W Mandatory reporting of violations.** An appraisal
16 management company that has a reasonable basis to believe an
17 appraiser has materially failed to comply with applicable laws
18 or rules or has materially violated the Uniform Standards of
19 Professional Appraisal Practice shall refer the matter to the
20 director in conformance with applicable federal laws and
21 regulations.



1 **§466K-X Prohibited conduct.** (a) A violation of this
2 section may constitute grounds for discipline against an
3 appraisal management company registered in this State; provided
4 that nothing in this part shall prevent an appraisal management
5 company from requesting an appraiser to provide additional
6 information about the basis for a valuation, correct objective
7 factual errors in an appraisal report, or consider additional
8 appropriate property information.

9 (b) No employee, director, officer, agent, independent
10 contractor, or other third party acting on behalf of an
11 appraisal management company shall:

12 (1) Procure or attempt to procure a registration or
13 renewal by knowingly making a false statement,
14 submitting false information, or refusing to provide
15 complete information in response to a question in an
16 application for registration or renewal;

17 (2) Wilfully violate this part or rules adopted by the
18 department pursuant to this part;

19 (3) Improperly influence or attempt to improperly
20 influence the development, reporting, result, or
21 review of an appraisal through intimidation, coercion,



- 1 extortion, bribery, or any other manner, including but
2 not limited to:
- 3 (A) Withholding payment for appraisal services;
 - 4 (B) Threatening to exclude an appraiser from future
5 work or threatening to demote or terminate the
6 appraiser in order to improperly obtain a desired
7 result;
 - 8 (C) Conditioning payment of an appraisal fee upon the
9 opinion, conclusion, or valuation to be reached;
10 or
 - 11 (D) Requesting that an appraiser report a
12 predetermined opinion, conclusion, or valuation
13 or the desired valuation of any person or entity;
- 14 (4) Alter, amend, or change an appraisal report submitted
15 by an appraiser without the appraiser's knowledge and
16 written consent;
- 17 (5) Except within the first ninety days after an
18 independent appraiser is added to an appraiser panel,
19 remove an independent appraiser from an appraiser
20 panel without prior written notice to the appraiser;



1 provided that the prior written notice shall include
2 the following evidence, if applicable:

3 (A) The appraiser's illegal conduct;

4 (B) A violation of the Uniform Standards of
5 Professional Appraisal Practice, this part, or
6 rules adopted pursuant to this part;

7 (C) Improper or unprofessional conduct; or

8 (D) Substandard performance or other substantive
9 deficiencies;

10 (6) Require an appraiser to sign any indemnification
11 agreement that would require the appraiser to defend
12 and hold harmless the appraisal management company or
13 any of its agents or employees for any liability,
14 damage, losses, or claims arising out of the services
15 performed by the appraisal management company or its
16 agents, employees, or independent contractors, and not
17 the services performed by the appraiser;

18 (7) Prohibit lawful communications between the appraiser
19 and any other person who the appraiser, in the
20 appraiser's professional judgment, believes possesses
21 information that would be relevant;



1 (8) Engage in any other act or practice that impairs or
2 attempts to impair a real estate appraiser's
3 independence, objectivity, and impartiality;

4 (9) Fail to timely respond to any subpoena or other
5 request for information;

6 (10) Fail to timely obey an administrative order of the
7 director or department; or

8 (11) Fail to fully cooperate in any investigation.

9 **§466K-Y Disciplinary proceedings.** The director may deny,
10 suspend, or revoke the registration of an appraisal management
11 company; impose a monetary penalty of an amount not to exceed
12 \$5,000 per violation; issue a letter of reprimand; refuse to
13 issue or renew the registration of an appraisal management
14 company; or take other disciplinary action against an appraisal
15 management company for any one or more of the following acts or
16 conditions:

17 (1) The applicant is not of a good moral character;

18 (2) The applicant has had a registration revoked or
19 suspended for cause, or surrendered in lieu of
20 disciplinary proceedings;



- 1 (3) An applicant for renewal of registration would not be
2 eligible for such registration on a first application;
- 3 (4) The issuance of a registration would result in a
4 violation of this part or any rules adopted pursuant
5 to this part;
- 6 (5) In the conduct of affairs under the registration, the
7 registrant demonstrated incompetency,
8 untrustworthiness, or conduct or practices rendering
9 the registrant unfit to carry on appraisal management
10 services; made continuance in the business detrimental
11 to the public interest; or is no longer in good faith
12 carrying on appraisal management services, and for
13 this conduct is found by the director to be a source
14 of detriment, injury, or loss to the public;
- 15 (6) The appraisal management company committed any act in
16 violation of this part;
- 17 (7) The appraisal management company violated any rule
18 adopted by the department in the interest of the
19 public and consistent with this part; or
- 20 (8) The appraisal management company procured a
21 registration or renewal of registration for the



1 appraisal management company or intentionally
2 committed any other act by fraud, misrepresentation,
3 or deceit.

4 **§466K-Z Fees; bonds.** (a) The director may charge the
5 appraisal management company reasonable fees to offset costs of
6 operating the appraisal management company registration program
7 established pursuant to this part.

8 (b) The director may require a surety bond of not more
9 than \$25,000.

10 **§466K-AA Exemption.** This part shall not apply to an
11 appraiser who enters an agreement with another appraiser for the
12 performance of an appraisal that, upon completion, results in a
13 report signed by the appraiser who completed the appraisal and
14 the appraiser who requested completion of the appraisal."

15 SECTION 3. Chapter 466K, Hawaii Revised Statutes, is
16 amended by amending the title to read as follows:

17 **"CHAPTER 466K**

18 **REAL ESTATE APPRAISERS AND APPRAISAL MANAGEMENT COMPANIES"**

19 SECTION 4. Chapter 466K, Hawaii Revised Statutes, is
20 amended by designating sections 466K-1 to 466K-6, as part I and
21 inserting a title before section 466K-1, to read as follows:



1 **"PART I. REAL ESTATE APPRAISERS"**

2 SECTION 5. Section 466K-1, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§466K-1 Findings and purpose.** The legislature finds that
5 the regulation of real estate appraisers is reasonably necessary
6 to protect consumers. The legislature further finds that title
7 12 United States Code [~~§3301~~] section 3301 et seq. requires that
8 real estate appraisals utilized in connection with federally
9 related transactions be performed by individuals who are
10 certified appraisers. The purposes of this [~~chapter~~] part are
11 to implement the requirements of title 12 United States Code
12 [~~§3301~~] section 3301 et seq. and to require that all real estate
13 appraisals be performed by licensed or certified appraisers.
14 The requirements of this [~~chapter~~] part do not apply to any real
15 estate appraiser employed by any county for purposes of valuing
16 real property for ad valorem taxation."

17 SECTION 6. Section 466K-3, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§466K-3 Powers and duties of the director.** In addition
20 to any other powers and duties authorized by law, the director
21 shall have the following powers and duties:



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- 1 (1) To grant permission to practice as a certified real
2 estate appraiser in this State pursuant to this
3 ~~[chapter]~~ part and title 12 United States Code [~~§3301~~]
4 section 3301 et seq. and the rules and regulations
5 adopted pursuant thereto;
- 6 (2) To adopt, amend, or repeal rules as the director finds
7 necessary to effectuate fully this ~~[chapter]~~ part and
8 title 12 United States Code [~~§3301~~] section 3301 et
9 seq.;
- 10 (3) To enforce this ~~[chapter]~~ part and title 12 United
11 States Code [~~§3301~~] section 3301 et seq. and rules and
12 regulations adopted pursuant thereto;
- 13 (4) To discipline a certified real estate appraiser for
14 any cause prescribed by this ~~[chapter]~~ part or title
15 12 United States Code [~~§3301~~] section 3301 et seq. or
16 for any violation of the rules and regulations and
17 refuse to grant a person permission to practice as a
18 certified real estate appraiser for any cause that
19 would be grounds for disciplining a certified real
20 estate appraiser;



1 (5) To act as the designated representative of this State
2 to implement title 12 United States Code [~~§3301~~]
3 section 3301 et seq.; and

4 (6) To appoint an advisory committee to assist with the
5 implementation of this [~~chapter~~] part and title 12
6 United States Code [~~§3301~~] section 3301 et seq. and
7 the rules and regulations adopted pursuant thereto."

8 SECTION 7. Section 466K-4, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) No person may practice as a real estate appraiser in
11 this State unless that person has been licensed or certified to
12 practice in accordance with this [~~chapter~~] part and rules
13 adopted by the director of commerce and consumer affairs
14 pursuant to chapter 91. All real estate appraisers who are
15 licensed or certified to practice in this State shall comply
16 with the current Uniform Standards of Professional Appraisal
17 Practice approved by the director when performing appraisals in
18 connection with a federally or non-federally related real estate
19 transaction, or certify compliance with the current Uniform
20 Standards of Professional Appraisal Practice in connection with
21 any arbitration proceeding to determine the fair market value,



1 fair market rental value, or fair and reasonable rent of real
2 estate."

3 SECTION 8. Section 466K-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]S466K-5[~~f~~] **Definitions.** For the purposes of this
6 [~~chapter,~~] part, unless the context otherwise requires:

7 "Arbitrator" means an individual appointed to render an
8 award in a controversy that is subject to an agreement to
9 arbitrate.

10 "Uniform Standards of Professional Appraisal Practice"
11 means the most recent iteration of the Uniform Standards of
12 Professional Appraisal Practice developed by the appraisal
13 standards board of The Appraisal Foundation and approved by the
14 director."

15 SECTION 9. Section 466K-6, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsections (b) and (c) to read:

18 "(b) In an arbitration proceeding to determine the fair
19 market value, fair market rental, or fair and reasonable rent of
20 real property where the arbitrator is a real estate appraiser
21 licensed or certified under this [~~chapter,~~] part, the record of



1 an award shall include but not be limited to findings of fact;
2 the state-licensed or certified appraiser's rationale for the
3 award; the state-licensed or certified appraiser's certification
4 of compliance with the most current Uniform Standards of
5 Professional Appraisal Practice as approved by the director; and
6 information regarding the evidence, including the data,
7 methodologies, and analysis that provided the basis for the
8 award.

9 (c) A real estate appraiser licensed or certified under
10 this [~~chapter~~] part who is named or appointed as an arbitrator
11 in a submission agreement to appraise or arbitrate entered into
12 after July 1, 2014, shall record with the bureau of conveyances
13 all arbitration awards; records of awards, if separately issued;
14 and any supplementary, dissenting, or explanatory opinions on
15 awards within ninety days of the notification of the
16 determination of the award to the parties."

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

18 "(e) Failure to comply with this section shall be a
19 violation of this [~~chapter~~] part for purposes of licensing or
20 certification."



1 SECTION 10. Section 846-2.7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Criminal history record checks may be conducted by:

4 (1) The department of health or its designee on operators
5 of adult foster homes for individuals with
6 developmental disabilities or developmental
7 disabilities domiciliary homes and their employees, as
8 provided by section 321-15.2;

9 (2) The department of health or its designee on
10 prospective employees, persons seeking to serve as
11 providers, or subcontractors in positions that place
12 them in direct contact with clients when providing
13 non-witnessed direct mental health or health care
14 services as provided by section 321-171.5;

15 (3) The department of health or its designee on all
16 applicants for licensure or certification for,
17 operators for, prospective employees, adult
18 volunteers, and all adults, except adults in care, at
19 healthcare facilities as defined in section 321-15.2;

20 (4) The department of education on employees, prospective
21 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 county liquor commissions on employees and
10 prospective employees involved in liquor
11 administration, law enforcement, and liquor control
12 investigations;
- 13 (8) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided
16 by section 346-17;
- 17 (9) The department of human services on prospective
18 adoptive parents as established under section
19 346-19.7;
- 20 (10) The department of human services or its designee on
21 applicants to operate child care facilities, household



1 members of the applicant, prospective employees of the
2 applicant, and new employees and household members of
3 the provider after registration or licensure as
4 provided by section 346-154, and persons subject to
5 section 346-152.5;

6 (11) The department of human services on persons exempt
7 pursuant to section 346-152 to be eligible to provide
8 child care and receive child care subsidies as
9 provided by section 346-152.5;

10 (12) The department of health on operators and employees of
11 home and community-based case management agencies and
12 operators and other adults, except for adults in care,
13 residing in community care foster family homes as
14 provided by section 321-15.2;

15 (13) The department of human services on staff members of
16 the Hawaii youth correctional facility as provided by
17 section 352-5.5;

18 (14) The department of human services on employees,
19 prospective employees, and volunteers of contracted
20 providers and subcontractors in positions that place
21 them in close proximity to youth when providing



- 1 services on behalf of the office or the Hawaii youth
2 correctional facility as provided by section 352D-4.3;
- 3 (15) The judiciary on employees and applicants at detention
4 and shelter facilities as provided by section 571-34;
- 5 (16) The department of public safety on employees and
6 prospective employees who are directly involved with
7 the treatment and care of persons committed to a
8 correctional facility or who possess police powers
9 including the power of arrest as provided by section
10 353C-5;
- 11 (17) The board of private detectives and guards on
12 applicants for private detective or private guard
13 licensure as provided by section 463-9;
- 14 (18) Private schools and designated organizations on
15 employees and prospective employees who may be in
16 positions that necessitate close proximity to
17 children; provided that private schools and designated
18 organizations receive only indications of the states
19 from which the national criminal history record
20 information was provided pursuant to section 302C-1;



- 1 (19) The public library system on employees and prospective
2 employees whose positions place them in close
3 proximity to children as provided by section
4 302A-601.5;
- 5 (20) The State or any of its branches, political
6 subdivisions, or agencies on applicants and employees
7 holding a position that has the same type of contact
8 with children, vulnerable adults, or persons committed
9 to a correctional facility as other public employees
10 who hold positions that are authorized by law to
11 require criminal history record checks as a condition
12 of employment as provided by section 78-2.7;
- 13 (21) The department of health on licensed adult day care
14 center operators, employees, new employees,
15 subcontracted service providers and their employees,
16 and adult volunteers as provided by section 321-15.2;
- 17 (22) The department of human services on purchase of
18 service contracted and subcontracted service providers
19 and their employees serving clients of the adult
20 protective and community services branch, as provided
21 by section 346-97;



1 (23) The department of human services on foster grandparent
2 program, senior companion program, and respite
3 companion program participants as provided by section
4 346-97;

5 (24) The department of human services on contracted and
6 subcontracted service providers and their current and
7 prospective employees that provide home and community-
8 based services under section 1915(c) of the Social
9 Security Act, title 42 United States Code section
10 1396n(c), or under any other applicable section or
11 sections of the Social Security Act for the purposes
12 of providing home and community-based services, as
13 provided by section 346-97;

14 (25) The department of commerce and consumer affairs on
15 proposed directors and executive officers of a bank,
16 savings bank, savings and loan association, trust
17 company, and depository financial services loan
18 company as provided by section 412:3-201;

19 (26) The department of commerce and consumer affairs on
20 proposed directors and executive officers of a



- 1 nondepository financial services loan company as
2 provided by section 412:3-301;
- 3 (27) The department of commerce and consumer affairs on the
4 original chartering applicants and proposed executive
5 officers of a credit union as provided by section
6 412:10-103;
- 7 (28) The department of commerce and consumer affairs on:
8 (A) Each principal of every non-corporate applicant
9 for a money transmitter license;
- 10 (B) The executive officers, key shareholders, and
11 managers in charge of a money transmitter's
12 activities of every corporate applicant for a
13 money transmitter license; and
- 14 (C) The persons who are to assume control of a money
15 transmitter licensee in connection with an
16 application requesting approval of a proposed
17 change in control of licensee,
18 as provided by sections 489D-9 and 489D-15;
- 19 (29) The department of commerce and consumer affairs on
20 applicants for licensure and persons licensed under
21 title 24;



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- 1 (30) The Hawaii health systems corporation on:
- 2 (A) Employees;
- 3 (B) Applicants seeking employment;
- 4 (C) Current or prospective members of the corporation
- 5 board or regional system board; or
- 6 (D) Current or prospective volunteers, providers, or
- 7 contractors,
- 8 in any of the corporation's health facilities as
- 9 provided by section 323F-5.5;
- 10 (31) The department of commerce and consumer affairs on:
- 11 (A) An applicant for a mortgage loan originator
- 12 license; and
- 13 (B) Each control person, executive officer, director,
- 14 general partner, and manager of an applicant for
- 15 a mortgage loan originator company license,
- 16 as provided by chapter 454F;
- 17 (32) The state public charter school commission or public
- 18 charter schools on employees, teacher trainees,
- 19 prospective employees, and prospective teacher
- 20 trainees in any public charter school for any position



1 that places them in close proximity to children, as
2 provided in section 302D-33;

3 (33) The counties on prospective employees who work with
4 children, vulnerable adults, or senior citizens in
5 community-based programs;

6 (34) The counties on prospective employees for fire
7 department positions which involve contact with
8 children or vulnerable adults;

9 (35) The counties on prospective employees for emergency
10 medical services positions which involve contact with
11 children or vulnerable adults;

12 (36) The counties on prospective employees for emergency
13 management positions and community volunteers whose
14 responsibilities involve planning and executing
15 homeland security measures including viewing,
16 handling, and engaging in law enforcement or
17 classified meetings and assisting vulnerable citizens
18 during emergencies or crises;

19 (37) The State and counties on employees, prospective
20 employees, volunteers, and contractors whose position
21 responsibilities require unescorted access to secured



1 areas and equipment related to a traffic management
2 center;

3 (38) The State and counties on employees and prospective
4 employees whose positions involve the handling or use
5 of firearms for other than law enforcement purposes;

6 (39) The State and counties on current and prospective
7 systems analysts and others involved in an agency's
8 information technology operation whose position
9 responsibilities provide them with access to
10 proprietary, confidential, or sensitive information;

11 (40) The department of commerce and consumer affairs on
12 [~~applicants~~]:

13 (A) Applicants for real estate appraiser licensure or
14 certification as provided by chapter 466K;

15 (B) Each person who owns more than ten per cent of an
16 appraisal management company who is applying for
17 registration as an appraisal management company,
18 as provided by section 466K-H; and

19 (C) Each of the controlling persons of an applicant
20 for registration as an appraisal management
21 company, as provided by section 466K-H;



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(41) The department of health or its designee on all license applicants, licensees, employees, contractors, and prospective employees of medical marijuana dispensaries, and individuals permitted to enter and remain in medical marijuana dispensary facilities as provided under sections 329D-15(a)(4) and 329D-16(a)(3);

(42) The department of commerce and consumer affairs on applicants for nurse licensure or license renewal, reactivation, or restoration as provided by sections 457-7, 457-8, 457-8.5, and 457-9;

[+] (43) [+] The county police departments on applicants for permits to acquire firearms pursuant to section 134-2 and on individuals registering their firearms pursuant to section 134-3;

[+] (44) [+] The department of commerce and consumer affairs on:
(A) Each of the controlling persons of the applicant for licensure as an escrow depository, and each of the officers, directors, and principals who

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1 will be in charge of the escrow depository's
 2 activities upon licensure; and

3 (B) Each of the controlling persons of an applicant
 4 for proposed change in control of an escrow
 5 depository licensee, and each of the officers,
 6 directors, and principals who will be in charge
 7 of the licensee's activities upon approval of
 8 such application,

9 as provided by chapter 449; and

10 [+](45)[+] Any other organization, entity, or the State, its
 11 branches, political subdivisions, or agencies as may
 12 be authorized by state law."

13 SECTION 11. In codifying the new sections added by section
 14 2 of this Act, the revisor of statutes shall substitute
 15 appropriate section numbers for the letters used in designating
 16 the new sections in this Act.

17 SECTION 12. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 13. This Act shall take effect on January 1, 2018.

20

4/10/18

*Paul M...
 Clarence...*

INTRODUCED BY:

Rosely de Beh
[Signature]

Will Green



S.B. NO. 390

Report Title:

Appraisal Management Companies; Registration; Appraisal Management Company Registration Program; Real Property

Description:

Establishes an appraisal management company registration program within the department of commerce and consumer affairs to conform to minimum standards established under federal law and regulations. Establishes registration requirements, standards, and penalties for violations. Takes effect on 1/1/2018.

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

