

JAN 27 2021

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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 to read as follows:

3 **"§454F-41 Mortgage loan recovery fund; use of fund; fees.**

4 (a) The commissioner shall establish and maintain a fund that  
5 shall be known as the mortgage loan recovery fund, from which  
6 any person aggrieved by an act, representation, transaction, or  
7 conduct of a mortgage loan originator company licensee involving  
8 fraud, misrepresentation, or deceit in violation of this chapter  
9 may recover, by [~~order~~] final judgment of the circuit court or  
10 district court of the county where the violation occurred, an  
11 amount of ten per cent of the residential mortgage loan, but not  
12 more than \$150,000, including court costs and fees as set by law  
13 and reasonable attorney fees as determined by the court, for  
14 damages sustained by the fraud, misrepresentation, or deceit of  
15 a mortgage loan originator company licensee.

16 [~~(b)~~] In addition to application fees and any fees  
17 required by NMLS, a mortgage loan originator licensee shall pay

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1 to the division a mortgage loan recovery fund fee [~~as follows~~  
2 ~~for deposit in the mortgage loan recovery fund:~~

3 ~~(1) The sum of \$300 for each principal office location of~~  
4 ~~a mortgage loan originator company;~~

5 ~~(2) The sum of \$250 for each branch office location of a~~  
6 ~~mortgage loan originator company; and~~

7 ~~(3) The sum of \$200 for each mortgage loan originator.] in~~

8 the sum of \$200.

9 [(~~e~~)] Upon application for renewal of a license under this  
10 chapter, a mortgage loan originator licensee shall pay, in  
11 addition to the licensee's license renewal fee and fees required  
12 by NMLS, to the division a mortgage loan recovery fund fee [~~as~~  
13 ~~follows for deposit in the mortgage loan recovery fund:~~

14 ~~(1) The sum of \$200 for each principal office location of~~  
15 ~~a mortgage loan originator company;~~

16 ~~(2) The sum of \$100 for each branch office location of a~~  
17 ~~mortgage loan originator company; and~~

18 ~~(3) The sum of \$100 for each mortgage loan originator.] in~~

19 the sum of \$100.

20 Mortgage loan recovery fund fees collected pursuant to this  
21 subsection shall be refundable upon the denial of a license  
22 renewal by the commissioner.

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1           ~~[(d)]~~ (b) When the mortgage loan recovery fund attains a  
2 funding level of \$750,000, the commissioner may make a finding  
3 to adjust the fees payable to the fund or may determine that  
4 payments made by mortgage loan originator licensees shall cease.  
5 If acceptance of payments is ceased, it shall remain ceased  
6 until the funding level falls below \$750,000. If the funding  
7 level falls below \$250,000 after the first five years of the  
8 establishment of the fund, the commissioner may adjust the fees  
9 to a reasonable level [~~for the purpose of attaining~~] to attain a  
10 funding level of \$750,000.

11           ~~[(e)]~~ (c) The commissioner or the commissioner's designee,  
12 as the manager of the mortgage loan recovery fund, shall be  
13 authorized to expend moneys in the mortgage loan recovery fund  
14 to:

15           (1) Retain private legal counsel to represent the  
16 commissioner or the division in any action that  
17 involves or may result in payment from the mortgage  
18 loan recovery fund;

19           (2) Retain a certified public accountant for accounting  
20 and auditing of the mortgage loan recovery fund;

21           (3) Employ necessary personnel, not subject to chapter 76,  
22 to assist the commissioner in exercising the

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1 commissioner's powers and duties with respect to the  
2 mortgage loan recovery fund; and

3 (4) Retain a consultant to recover and collect any payments  
4 from the mortgage loan recovery fund, plus interest from  
5 the judgment debtor."

6 SECTION 2. Section 454F-42, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§454F-42 Statute of limitation; recovery from fund. (a)**

9 No action for a judgment that subsequently results in an order  
10 for collection from the mortgage loan recovery fund shall be  
11 commenced later than six years from the accrual of the cause of  
12 action. When any aggrieved person commences an action for a  
13 judgment that may result in collection from the mortgage loan  
14 recovery fund, the aggrieved person shall notify the  
15 commissioner in writing at the time of the commencement of the  
16 action and shall submit to the commissioner any documents  
17 required by the commissioner pursuant to rules issued in  
18 accordance with chapter 91.

19 (b) When any aggrieved person receives a valid judgment  
20 upon the grounds of fraud, misrepresentation, or deceit that  
21 occurred before the effective date of section 454F-41 against  
22 any licensee from any circuit or district court where the

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1 violation occurred, the aggrieved person shall proceed against  
2 the bond covering the license that was in force prior to the  
3 enactment of section 454F-41 and establishment of the mortgage  
4 loan recovery fund.

5 (c) The court shall proceed upon an application to recover  
6 from the mortgage loan recovery fund in a summary manner and, at  
7 hearing, the aggrieved person shall be required to show:

8 (1) The person is not a spouse of the judgment debtor or  
9 the personal representative of a spouse of the  
10 judgment debtor;

11 (2) The person has complied with all the requirements of  
12 this section;

13 (3) The person has obtained a judgment pursuant to section  
14 454F-41(a) that states the amount of the judgment and  
15 the amount owed on the judgment debt as of the date of  
16 the application;

17 (4) The person has made all reasonable searches and  
18 inquires to ascertain whether the judgment debtor is  
19 possessed of real or personal property or other assets  
20 liable to be sold or applied in satisfaction of the  
21 judgment; and

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1 (A) The search has uncovered no personal or real  
2 property or other assets liable to be sold or  
3 applied; or

4 (B) The search has uncovered personal or real  
5 property or other assets liable to be sold or  
6 applied, the person has taken all necessary  
7 action and completed all necessary proceedings  
8 for the realization thereof, and the amount  
9 realized was insufficient to satisfy the  
10 judgment; provided that the person shall state  
11 the amount realized and the balance remaining due  
12 on the judgment after application of the amount  
13 realized; and

14 (5) That where the licensee is a judgment debtor in a  
15 bankruptcy proceeding, the aggrieved person has  
16 obtained an order from the bankruptcy court declaring  
17 the judgment against the licensee to be non-  
18 dischargeable.

19 (d) Upon hearing, if the court is satisfied of the truth  
20 of all matters required by subsection (c) and that the aggrieved  
21 person has fully pursued and exhausted all remedies available to  
22 the person for recovering the amount awarded by the judgment of

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1 the court, the court shall issue an order directing the  
2 commissioner to pay from the mortgage loan recovery fund  
3 whatever sum the court finds to be payable upon the claim in  
4 accordance with the limitations contained in this section.

5 (e) The commissioner may also consider applications to  
6 recover from the mortgage loan recovery fund. An aggrieved  
7 person who has obtained a final judgment from the court may  
8 submit the person's application to the commissioner. If the  
9 commissioner is satisfied as to the truth of the application,  
10 and that despite reasonable efforts the person has been unable  
11 to recover on the judgment, the commissioner may issue an order  
12 approving payment from the fund.

13 [~~e~~] (f) Notwithstanding any other provision, the  
14 liability of the mortgage loan recovery fund shall not exceed  
15 the sum of \$100,000 against any one licensee."

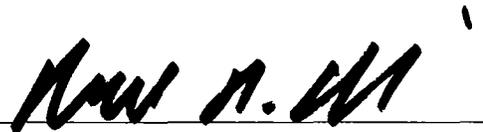
16 SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act, upon its approval, shall take effect  
19 on July 1, 2021.

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INTRODUCED BY:



22

BY REQUEST

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**Report Title:**

Mortgage Loan Recovery Fund; Mortgage Loan Originator;  
Restitution; Chapter 454F

**Description:**

Allows a person aggrieved by the fraud, misrepresentation, or deceit of a mortgage loan originator company licensee to receive restitution payment upon a final court order. Repeals fees paid by mortgage loan originator companies and their branch office locations to the Mortgage Loan Recovery Fund. Provides the Commissioner of Financial Institutions with the authority to consider applications to recover from the fund.

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

# SB. NO. 1105

## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

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

PURPOSE: To allow a person aggrieved by the fraud, misrepresentation, or deceit of a mortgage loan originator company licensee to receive restitution payment upon a final court order, to repeal fees paid by mortgage loan originator companies and their branch office locations to the Mortgage Loan Recovery Fund, and to provide the Commissioner of Financial Institutions with the authority to consider applications to recover from the fund.

MEANS: Amend sections 454F-41 and 454F-42, Hawaii Revised Statutes.

JUSTIFICATION: Currently, only a person who holds a court order against a mortgage loan originator company licensee for fraud, deceit, or misrepresentation is eligible to receive restitution payment from the Mortgage Loan Recovery Fund. The court must separately order the Department of Commerce and Consumer Affairs' Division of Financial Institutions (DFI) to make the restitution payment to the aggrieved consumer, and it typically takes the court eight to twelve months to issue this additional order before the DFI can process the restitution payment.

In addition, the Commissioner of Financial Institutions does not presently have authority to consider applications to recover from the Mortgage Loan Recovery Fund. Pursuant to section 454F-42(e), HRS, the liability of the fund shall not exceed the sum of \$100,000 against any one license.

The Mortgage Loan Recovery Fund currently has sufficient funds to make restitution payments to aggrieved persons without collecting fees from mortgage loan originator companies and their branches.

Impact on the public: This bill will allow aggrieved persons to receive restitution payments more efficiently from the Mortgage Loan Recovery Fund, as the DFI will be able to make the restitution payments based upon final court orders, without separate court orders requiring the DFI to make payment.

The bill's repeal of fees paid by mortgage loan originator companies and their branches will not impact the public. Individual mortgage loan originators will still be required to pay fees into this fund, as the federal Secure and Fair Enforcement for Mortgage Licensing Act requires them to meet a net worth or surety bond requirement or to pay into a state fund.

Impact on the department and other agencies: The DFI anticipates minimal administrative costs as a result of paying restitution from the Mortgage Loan Recovery Fund to aggrieved consumers. The Mortgage Loan Recovery Fund will continue to be funded through fees paid by individual mortgage loan originators.

The DFI also anticipates minimal administrative costs as a result of repealing the fees paid by mortgage loan originator companies and their branches.

GENERAL FUNDS:	None.
OTHER FUNDS:	Mortgage Loan Recovery Fund.
PPBS PROGRAM DESIGNATION:	CCA-104.
OTHER AFFECTED AGENCIES:	None.

EFFECTIVE DATE: July 1, 2021.