

ACT 43

S.B. NO. 1326

A Bill for an Act Relating to Lender Exemptions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to encourage and facilitate lending from sources outside of the State of Hawaii by making existing exemptions from certain state laws available to such lenders without a registration requirement.

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

**“§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized

under any law of this State or of the United States to do business in the State;

- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson; [and]
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor[.]; and
- (6) Foreign lender as defined in section 207-11."

SECTION 3. Section 454D-2, Hawaii Revised Statutes, is amended to read as follows:

**"§454D-2 Exemptions.** This chapter shall not apply to the following persons:

- (1) Real estate brokers and salespersons licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesperson's broker, has an errors and omissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
- (2) Banks, collection agencies, credit unions, escrow depositories, financial services loan companies, savings and loan associations, and trust companies authorized to do business in the State;
- (3) Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs satisfactory proof of that status;
- (4) Persons performing the services normally rendered by servicing agents under order of any court; [and]
- (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter[.]; and
- (6) Foreign lenders as defined in section 207-11."

SECTION 4. Section 207-14, Hawaii Revised Statutes, is repealed.

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SECTION 5. Section 207-15, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 26, 1999.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.