

**ACT 32**

S.B. NO. 1218

A Bill for an Act Relating to Mortgage Loan Originators.

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

SECTION 1. The purpose of this Act is to implement a regulatory system, to be effective July 1, 2010, for mortgage loan originators. Although the legislature has struggled with this issue for several years, the passage of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act of 2008), 12 United States Code sections 5101 to 5116, necessitates immediate state action on this issue. Under the S.A.F.E. Mortgage

Licensing Act, states that do not implement a sufficient regulatory system for mortgage loan originators will be subject to federal oversight and regulation of their residential mortgage industries. The legislature finds that it is in the best interest of this State and its residents for regulation of mortgage loan originators to remain the purview of the State.

The model act upon which this Act is based has been deemed to be compliant with the S.A.F.E. Mortgage Licensing Act by the United States Department of Housing and Urban Development. The legislature finds that this Act provides for an orderly transition from the current licensing system under chapter 454, Hawaii Revised Statutes, to the new federally-mandated regulatory system that will become effective July 1, 2010. The legislature finds that this measure provides for an orderly one-year transition period where chapter 454 will continue to control licensing and oversight while the division of financial institutions of the department of commerce and consumer affairs enacts the necessary rules and procedures to fully implement the regulatory system created by this Act. The legislature further finds that the July 1, 2010 implementation of the new regulatory system created by this Act requires the cooperation of the commissioner of financial institutions. Therefore, the legislature respectfully asks that the commissioner of financial institutions collaborate openly and in good faith with the legislature to ensure a smooth transition to the new regulatory system, which shall become effective on July 1, 2010.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 22 to be appropriately designated and to read as follows:

**“CHAPTER  
SECURE AND FAIR ENFORCEMENT FOR MORTGAGE  
LICENSING ACT**

§ -1 **Definitions.** In this chapter, unless the context or subject matter otherwise requires:

“Advertisement” or “advertising” means:

- (1) Issuing any card, sign, or device to any person;
- (2) Causing, permitting, or allowing the placement of any sign or marking on or in any building, vehicle, or structure;
- (3) Placing an advertisement in any newspaper, magazine, or on the Internet;
- (4) Listing or advertising in any directory under a classification or heading that includes the words “mortgage loan originator,” or the like;
- (5) Broadcasting commercials by airwave or internet transmission; or
- (6) Transmitting any written communication, including:
  - (A) A letter or a postcard that encourages a person to borrow from or through a mortgage loan originator; or
  - (B) A written communication that encourages a person to refinance the person’s existing residential mortgage loan and mentions that a new residential mortgage loan will reduce the monthly payment the borrower will pay on the new residential mortgage loan or reduce the interest rate on the borrower’s existing residential mortgage loan.

“Applicant” means an individual applying for the issuance of a license or a renewal of a license under this chapter.

“Clerical or support duties” include the following activities subsequent to the receipt of an application:

- (1) The receipt, collection, distribution, and analysis of information for the processing or underwriting of a residential mortgage loan; and
- (2) Communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling borrowers about residential mortgage loan rates or terms.

“Commissioner” means the commissioner of financial institutions.

“Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

“Immediate family member” means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, and equivalent adoptive relationships.

“Individual” means a natural person.

“Insured depository institution” means the same as in 12 United States Code Section 1813(c)(2); provided that it also includes any credit union whose deposits are insured by the National Credit Union Association.

“Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a mortgage loan originator or a person who is exempt from licensing as a mortgage loan originator under this chapter.

“Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

- (1) Takes a residential mortgage loan application; or
- (2) Offers or negotiates terms of a residential mortgage loan.

“Nationwide Mortgage Licensing System” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

“Nontraditional mortgage product” means any mortgage product other than a thirty-year fixed rate residential mortgage loan where the interest rate is fixed for the thirty-year term.

“Person” means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.

“Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

- (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (3) Negotiating on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction;
- (4) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker by the State; and
- (5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4).

“Registered mortgage loan originator” means any individual who:

- (1) Meets the definition of mortgage loan originator and is an employee of:
  - (A) An insured depository institution;
  - (B) A subsidiary that is:
    - (i) Owned and controlled by an insured depository institution; and
    - (ii) Regulated by a federal banking agency; or
  - (C) An institution regulated by the Farm Credit Administration; and
- (2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

“Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act, 15 United States Code Section 1601 et seq, or residential real estate.

“Residential real estate” means any real property located in this state, upon which a dwelling is constructed or intended to be constructed.

“Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System.

**§ -2 Exemptions.** This chapter shall not apply to the following:

- (1) A registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence;
- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by an agent of a lender, mortgage broker, or other mortgage loan originator;
- (5) An individual engaging solely in loan processor or underwriter activities; provided that an individual, including an independent contractor, who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, and any loan processor or underwriter, including an independent contractor, who advertises that the individual can or will perform any of the activities of a mortgage loan originator or engages in the activities of a mortgage loan originator shall not be exempt under this chapter and shall obtain and maintain a license under this chapter and a valid unique identifier issued by the Nationwide Mortgage Licensing System;
- (6) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity

is compensated by a lender, a mortgage broker, or other mortgage loan originator or by an agent of the lender, mortgage broker, or other mortgage loan originator; or

- (7) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in Section 101(53D) of Title 11, United States Code.

§ -3 **Requirement of licensure.** Effective August 1, 2010, or such later date approved by the United States Department of Housing and Urban Development pursuant to the authority granted under Public Law 110-289, section 1508(e), an individual, unless specifically exempted from this chapter, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually, a license under this chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System, and shall submit to the Nationwide Mortgage Licensing System any reports that shall be in a form and contain information as the Nationwide Mortgage Licensing System may require.

§ -4 **License and registration; application; issuance.** (a) Applicants for a license shall apply in a form as prescribed by the commissioner.

(b) To fulfill the purposes of this chapter, the commissioner shall establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) For the purpose and the extent necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System.

(d) In connection with an application for licensing as a mortgage loan originator, the applicant, at a minimum, shall furnish to the Nationwide Mortgage Licensing System information concerning the applicant's identity, including:

- (1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System including the submission of authorization for the Nationwide Mortgage Licensing System and the commissioner to obtain:
  - (A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 United States Code 1681 et seq; and
  - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(e) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(f) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting and distributing information to and from any source directed by the commissioner.

**§ -5 Issuance of license.** The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

- (1) The applicant has never had a mortgage loan originator license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) The applicant has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under chapter 853 to a felony in a domestic, foreign, or military court:
  - (A) During the seven-year period preceding the date of the application for licensing and registration; or
  - (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;
 

provided that any pardon of a conviction shall not be deemed a conviction for purposes of this section;
- (3) The applicant has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage loan originator shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial condition. A determination that an individual has not shown financial responsibility may be based on:
  - (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
  - (B) Current outstanding tax liens or other government liens and filings;
  - (C) Foreclosures within the past three years; and
  - (D) A pattern of seriously delinquent accounts within the past three years;
- (4) The applicant has completed the pre-licensing education requirement described in section -6;
- (5) The applicant has passed a written test that meets the test requirements in section -7; and
- (6) The applicant has met the surety bond requirement as required in section -13.

**§ -6 Pre-licensing and re-licensing; education of mortgage loan originators.** (a) A person shall complete at least twenty hours of pre-licensing education approved in accordance with subsection (b) that includes:

- (1) Three hours of federal law and regulations;
- (2) Three hours of ethics, that shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any pre-licensing education course approved by the Nationwide Mortgage Licensing System that is provided by the employer of the applicant, an entity that is affiliated with the

applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System in subsection (a) for any state shall be accepted as credit towards completion of pre-licensing education requirements in this State.

(f) A person previously licensed under this chapter and applying to be licensed under this chapter shall prove to the satisfaction of the commissioner that the person has completed all of the continuing education requirements for the year in which the license was last held.

**§ -7 Testing of mortgage loan originators.** (a) In order to meet the passing of the written test requirement in section -5, an applicant shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and administered by a test provider approved by the Nationwide Mortgage Licensing System based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) Ethics;
- (2) Federal law and regulations pertaining to mortgage origination;
- (3) State law and rules pertaining to mortgage origination; and
- (4) Federal and state law, rules and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall have passed a qualified written test if the individual achieves a test score of seventy-five per cent of the correct answers to questions or better. An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer not taking into account any time during which the individual is a registered mortgage loan originator, shall retake the test.

**§ -8 Standards for license renewal.** (a) The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for licensure under section -5;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements in section -9; and
- (3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The commissioner may

adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System.

**§ -9 Continuing education; mortgage loan originators.** (a) Each year, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) that shall include at least:

- (1) Three hours of federal law and regulations;
- (2) Two hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues; and
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any education course that is approved by the Nationwide Mortgage Licensing System and provided by the employer of the mortgage loan originator, an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

(e) A licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken, except for continuing education credits received pursuant to this chapter; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive continuing education credit for the course taught at the rate of two hours credit for every one hour taught.

(g) Continuing education courses as described in subsection (a) and approved by the Nationwide Mortgage Licensing System for any state, that are successfully completed by a licensed mortgage originator, shall be accepted as credit towards completion of continuing education requirements in this state.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of section -8(a)(1) and (3) may make up any deficiency in continuing education as established by rule adopted by the commissioner.

**§ -10 Authority to require license.** In addition to any other duties imposed upon the commissioner, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System. The commissioner may establish by rule pursuant to chapter 91, requirements for mortgage loan originators, including:

- (1) Background checks of:
  - (A) Criminal history through fingerprint or other databases;
  - (B) Civil or administrative records;
  - (C) Credit history; and



- (D) Any other source deemed necessary by the Nationwide Mortgage Licensing System and registry;
- (2) Fees to apply for or renew licenses through the Nationwide Mortgage Licensing System;
- (3) The setting or resetting as necessary of license renewal and reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activity the commissioner deems necessary to participate in the Nationwide Mortgage Licensing System.

**§ -11 Nationwide Mortgage Licensing System; registry information; challenge process.** The commissioner shall establish a process by rule pursuant to chapter 91 whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System by the commissioner.

**§ -12 Enforcement authorities; violations; penalties.** (a) In order to ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91:

- (1) Deny, suspend, revoke, condition, or decline to renew a license because of a violation of this chapter, rules, an order, or a directive entered under this chapter;
- (2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensed mortgage loan originator fails at any time to meet the requirements of section -6 or section -8, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this chapter for violations of this chapter;
- (4) Impose fines on persons subject to this chapter; and
- (5) Issue orders or directives under this chapter as follows:
  - (A) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
  - (B) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
  - (C) Enter immediate temporary orders to cease doing business under a license or interim license issued pursuant to the authority granted under this chapter if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter; or
  - (D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any rule prescribed by the commissioner under this chapter or order issued under the authority of this chapter.

(c) The maximum penalty for each act or omission described in subsection (b) shall be \$25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner shall be a separate and distinct violation.

**§ -13 Surety bond; required.** (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of the person may be used in lieu of the mortgage loan originator's surety bond.

(b) The surety bond shall provide coverage for each mortgage loan originator in an amount prescribed in subsection (c). The surety bond shall be in a form as prescribed by the commissioner. The commissioner may adopt rules pursuant to chapter 91 with respect to the requirements for the surety bonds necessary to accomplish the purposes of this chapter.

(c) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the commissioner.

(d) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.

(e) Immediately upon recovery of any action on the bond, the commissioner may require the filing of a new bond.

**§ -14 Confidentiality.** (a) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to:

- (1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or a state; or
- (2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System applicable to the information or material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(d) Notwithstanding chapter 92F, the examination process and related information and documents, including the reports of examination, are confidential and are not subject to discovery or disclosure in civil or criminal lawsuits.

(e) Notwithstanding any law to the contrary, the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of this section.

(f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement

actions against, mortgage loan originators that are included in the Nationwide Mortgage Licensing System for access by the public.

**§ -15 Investigation and examination authority.** (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- (1) Criminal, civil, and administrative history information, including nonconviction data under chapter 853;
- (2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and
- (3) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensed mortgage loan originator, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each licensed mortgage loan originator, individual, or person subject to this chapter shall provide to the commissioner upon request, the books and records relating to the operations of the licensee, individual, or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator, individual, or person subject to this chapter concerning their business.

(d) Each licensed mortgage loan originator, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensed mortgage loan originator or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensed mortgage loan originator have been, or are at risk of being altered

or destroyed for purposes of concealing a violation of this chapter, the licensed mortgage loan originator or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) The commissioner may:

- (1) Retain attorneys, accountants, or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensed mortgage loan originator, individual, or person subject to this chapter;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this State; and
- (5) Accept audit reports made by an independent certified public accountant for the licensed mortgage loan originator, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether such licensed mortgage loan originator, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(h) No licensed mortgage loan originator, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination fee based upon the cost per hour per examiner for all mortgage loan originators examined by the commissioner or the commissioner's staff. The hourly fee shall be \$40 or an amount as the commissioner shall establish by rule pursuant to chapter 91.

**§ -16 Mortgage call reports.** Each licensed mortgage originator shall submit to the Nationwide Mortgage Licensing System reports of condition, using the form entitled "REPORT OF CONDITION", which shall be in such form and contain such information as the Nationwide Mortgage Licensing System may require.

**§ -17 Prohibited practices.** It shall be a violation of this chapter for a mortgage loan originator to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower that provides in substance that the person or individual subject to this chapter may

- earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
  - (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
  - (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations thereunder;
  - (8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted thereunder, applicable to any business authorized or conducted pursuant to this chapter;
  - (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
  - (10) Negligently make any false statement or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System or in connection with any investigation conducted by the commissioner or another government agency;
  - (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
  - (12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
  - (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
  - (14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction; or
  - (15) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan. A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication. Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication.

**§ -18 Powers of commissioner.** (a) The commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary for the administration of this chapter.

(b) In addition to any other powers provided by law, the commissioner shall have the authority to:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules and issue declaratory rulings or informal nonbinding interpretations;
- (3) Develop requirements for licensure through rules, including establishing the content of the written tests required under section -7;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (5) Create fact-finding committees that may make recommendations to the commissioner for the commissioner's deliberations;
- (6) Require an applicant or any of its officers, directors, employees, partners, members, managers, and agents to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (7) Contract with qualified persons, including investigators who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner's powers and duties;
- (8) Require that all fees, fines, and charges collected by the commissioner under this chapter be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the commissioner's power and duties, including the authority to conduct contested case proceedings under chapter 91; and
- (10) Require a mortgage loan originator to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or in the alternative, any policy position of the Conference of State Bank Supervisors.

**§ -19 Unique identifier shown.** The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

**§ -20 Report to Nationwide Mortgage Licensing System.** Notwithstanding any other law to the contrary, the commissioner is required to regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System subject to the confidentiality provisions contained in section -14.

**§ -21 Fees and costs.** (a) Each application for a mortgage loan originator license shall be accompanied by an application fee of \$250, or an amount as the commissioner shall establish by rule pursuant to chapter 91.

(b) Upon obtaining approval for a license, an initial license fee shall be paid to the commissioner in the amount of \$175 or an amount as the commissioner shall establish by rule pursuant to chapter 91.

(c) By December 31 of each year, every mortgage broker and loan originator licensed under this chapter shall pay an annual license renewal fee of \$325, or an amount as the commissioner shall establish by rule pursuant to chapter 91.”

SECTION 3. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-502 Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any principal office, branch, agency, automatic teller machine, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this State as a mortgage broker licensed under chapter 454, loan originator licensed under chapter , or as a real estate collection servicing agent.”

SECTION 4. 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, operating subsidiaries of a bank established and operating under section 412:5-203, trust companies, savings 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;
- (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;
- (6) Foreign lender as defined in section 207-11; ~~and~~
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:

- (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purposes of section 454-4; and
  - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14[-]; and
- (8) An individual licensed as a mortgage loan originator under chapter ."

SECTION 5. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)[-]; provided that, in order to establish regulatory practices for residential mortgage lending, a surcharge of \$100 shall be charged to every mortgage broker and mortgage solicitor, which surcharge shall be due on December 31, 2009. Failure of any mortgage broker or mortgage solicitor to pay the biennial renewal fee on or before December 31 of an even-numbered year or the surcharge shall constitute an automatic forfeiture of the license. The forfeited license may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee is paid in addition to the delinquent license fee or surcharge. A licensee who fails to restore a license as provided in this subsection shall apply as a new applicant."

SECTION 6. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of "creditor" to read as follows:

"'Creditor' means any bank; savings and loan association; trust company; financial services loan company; credit union; mortgage banker, broker, or solicitor; mortgage loan originator; pawnbroker; mutual benefit society or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue ~~such~~ a loan of money or credit."

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult



- living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
  - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
  - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
  - (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
  - (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
  - (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
  - (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
  - (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
  - (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
  - (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
  - (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
  - (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
  - (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
  - (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
  - (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
  - (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same

type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;

- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (Title 42 United States Code Section 1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- [(27)] The department of commerce and consumer affairs on:
  - (A) Each principal of every non-corporate applicant for a money transmitter license; and
  - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9; [and]
- (28) The department of commerce and consumer affairs on an applicant for a mortgage loan originator's license as provided by chapter : and
- [(28)] (29) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 8. Effective August 1, 2010:

- (1) No new license shall be issued and no license renewal shall be effected under chapter 454, Hawaii Revised Statutes; and
- (2) An individual who is subject to this Act shall be required to be licensed under chapter , Hawaii Revised Statutes, by such later date approved by the United States Department of Housing and Urban Development, pursuant to the authority granted under Public

Law 110-289, section 1508(e). As of the date that an individual is required to be licensed under chapter , Hawaii Revised Statutes, the remaining pro rata balance of the fees paid by the individual under chapter 454, Hawaii Revised Statutes, shall be applied to the individual's fees due under chapter , Hawaii Revised Statutes, until exhausted.

SECTION 9. An individual shall not be subject to chapter 454, Hawaii Revised Statutes, upon the effective date of the individual's license under the new chapter established under this Act; provided that this section shall not affect rights and duties that have matured, penalties that were incurred, and proceedings that were begun before the effective date of the individual's license under this Act.

SECTION 10. The commissioner of financial institutions shall prepare a report detailing the implementation of this Act. The report shall include an evaluation of administrative rules necessary for the implementation of this Act, budget recommendations, requests for staff and resources, developments in federal law and regulations that affect the implementation of this Act, and guidance or recommendations put forth by the United States Department of Housing and Urban Development. The commissioner of financial institutions shall report findings, recommendations, and any proposed amendments or additions to this Act to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 11. There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$159,400 or so much thereof as may be necessary for fiscal year 2009-2010 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

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

SECTION 13. This Act shall take effect on July 1, 2009; provided that sections 2, 3, 4, 6, and 7 shall take effect on July 1, 2010.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)