

ACT 150

S.B. NO. 951

A Bill for an Act Relating to Mortgage Loan Origination.

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

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

1. By adding a new definition to be appropriately inserted and to read:
““Executive officer” means a president, chairperson of an executive committee, senior officer responsible for a subject entity or organization’s business, chief financial officer, or any other person who performs similar functions related to the subject entity or organization.”
2. By amending the definition of “qualified individual” to read:
““Qualified individual” means an individual who is responsible for the oversight of mortgage loan originators that are employed by or contracted to

perform work for a mortgage loan originator company~~[-]~~ or an exempt sponsoring mortgage loan originator company.”

SECTION 2. Section 454F-1.6, Hawaii Revised Statutes, is amended to read as follows:

“§454F-1.6 Presumption of control. An individual is presumed to control a mortgage loan originator company if that individual is [a]:

- (1) ~~An executive officer;~~ or
- (2) ~~A~~ director, general partner, ~~or~~ managing member~~[-, or executive officer]~~ who directly or indirectly has the right to vote ten per cent or more of a class of voting securities or has the power to sell or direct the sale of ten per cent or more of a class of voting securities of that licensee or applicant.”

SECTION 3. Section 454F-1.7, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§454F-1.7 Duties of a ~~[mortgage loan originator company’s]~~ qualified individual and branch manager. (a) Every mortgage loan originator company licensed under this chapter and every exempt sponsoring mortgage loan originator company registered with NMLS under this chapter shall designate a qualified individual to fulfill the duties and responsibilities set forth in this chapter. A qualified individual shall have the duty to manage and supervise the mortgage loan origination activities of [a] the principal office of the licensed mortgage loan originator ~~[company’s principal office]~~ company or exempt sponsoring mortgage loan originator company, and the licensed mortgage loan originators located at or working out of the principal office and all company branch offices. A qualified individual for a mortgage loan originator company shall hold a license as a mortgage loan originator issued pursuant to this chapter.”

2. By amending subsection (c) to read:

“(c) A qualified individual for a mortgage loan originator company or exempt sponsoring mortgage loan originator company shall be responsible for:

- (1) Supervising the maintenance and accounting of client trust accounts and disbursements from those accounts;
- (2) Supervising the maintenance of all records, contracts, and documents of the mortgage loan originator company~~[-]~~ or exempt sponsoring mortgage loan originator company;
- (3) Supervising all mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company~~[-]~~ or exempt sponsoring mortgage loan originator company;
- (4) Supervising all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company~~[-]~~ or exempt sponsoring mortgage loan originator company;
- (5) Developing and enforcing policies and procedures relating to the handling of residential mortgage loan transactions and the professional conduct of the licensed mortgage loan originators and other staff;
- (6) Developing and monitoring compliance with a policy on continuing education requirements for all licensed mortgage loan originators

who are employed by or are independent contractors of the mortgage loan originator company or exempt sponsoring mortgage loan originator company pursuant to the requirements of this chapter and the rules of the commissioner;

- (7) Ensuring that the licenses of all mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company[;] or exempt sponsoring mortgage loan originator company, and the license of the mortgage loan originator company are current and active, that the exempt sponsoring mortgage loan originator company is registered with NMLS, and that all required fees are timely paid to the mortgage loan recovery fund;
- (8) Establishing and conducting a training program for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company[;] or exempt sponsoring mortgage loan originator company;
- (9) Ensuring that all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company or exempt sponsoring mortgage loan originator company are provided adequate information and training on the latest amendments to licensing laws and rules and any other applicable laws and rules;
- (10) Notifying the commissioner of the termination of the employment or independent contractor relationship of licensed mortgage loan originators who were employed by or were independent contractors of the mortgage loan originator company or exempt sponsoring mortgage loan originator company upon the termination of employment or the independent contractor relationship; and
- (11) Ensuring that the records, loan documents, and agreements including mortgage loan originator agreements are retained for seven years on paper or in electronic format by the mortgage loan originator company[;] or exempt sponsoring mortgage loan originator company.”

SECTION 4. Section 454F-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In connection with an application for a license under this chapter, the applicant, at a minimum, shall furnish to NMLS information concerning the applicant’s identity, including:

- (1) Fingerprints of the applicant or, if an applicant is not an individual, each of the applicant’s control persons, executive officers, directors, general partners, and managing members 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[;], accompanied by the applicable fee charged by the entities conducting the criminal history background check; and
- (2) Personal history and experience of the applicant or, if an applicant is not an individual, each of the applicant’s control persons, executive officers, directors, general partners, and managing members in a form prescribed by NMLS including the submission of authorization for NMLS 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, title 15 United States Code section 1681 et seq.; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; provided that the commissioner may use any information obtained pursuant to this subsection or through NMLS to determine an applicant's demonstrated financial responsibility, character, and general fitness for licensure."

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

"(b) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and ~~managers,~~ managing members, shall submit authorization to the commissioner for the commissioner to conduct background checks to determine or verify the information in subsection (a) in each state where the person has conducted mortgage loan origination activities. Authorization pursuant to this subsection shall include consent to provide additional fingerprints, if necessary, to law enforcement or regulatory bodies in other states."

SECTION 6. Section 454F-10.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every mortgage loan originator company licensed under this chapter and every exempt sponsoring mortgage loan originator company shall have and maintain a principal place of business in the State and shall designate a qualified individual to fulfill the duties and responsibilities of a qualified individual set forth in section 454F-1.7."

SECTION 7. Section 454F-10.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons who will obtain control ~~[are licensed pursuant to]~~ will be in compliance with this chapter[;] upon approval of the application for a proposed change of control of the licensee and will have the competence, experience, character, and general fitness to control the licensee or person in control of the licensee in a lawful and proper manner[;], and that the interests of the public will not be jeopardized by the change of control."

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

"(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 454F-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 control persons, executive officers, directors, ~~[employees,]~~ general partners, and managing 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 or employ qualified persons, including investigators, examiners, or auditors 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, except for fees designated for deposit into the mortgage loan recovery fund pursuant to section 454F-41, be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) Process and investigate complaints, 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 licensee 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."

SECTION 9. Section 454F-22, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

"(a) Except as provided in subsection (b), a mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$600;
- (2) Annual license renewal fee of \$350;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee ~~[of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.]~~ pursuant to section 454F-4(d)(1).

(b) A sole proprietorship mortgage loan originator shall pay the following fees to obtain and maintain a valid sole proprietor mortgage loan originator license:

- (1) Initial application fee of \$35;
- (2) Annual license renewal fee of \$35;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee ~~[of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.]~~ pursuant to section 454F-4(d)(1).

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

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$900;

- (B) Processing fee of \$35 for each control person;
 - (C) Annual license renewal fee of \$600;
 - (D) Reinstatement fee of \$100;
 - (E) Late fee of \$25 per day; and
 - (F) Criminal background check fee ~~[of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and] pursuant to section 454F-4(d)(1).~~
- (2) Fees payable for each branch office of a mortgage loan originator company:
- (A) Initial application fee of \$250;
 - (B) Annual license renewal fee of \$100;
 - (C) Reinstatement fee of \$100; and
 - (D) Late fee of \$25 per day.”

SECTION 10. Section 454F-25, Hawaii Revised Statutes, is amended to read as follows:

“§454F-25 Nonprofit organizations; mortgage loan originators. (a) An employee who performs mortgage loan originator activities for a nonprofit organization is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee’s actions are part of the employee’s duties as an employee of the nonprofit organization;
- (2) The employee only provides mortgage loan originator services with respect to residential mortgage loans with terms favorable to the borrower; and
- (3) The nonprofit organization ~~[registers with]~~ maintains a valid registration as a nonprofit organization in NMLS and a unique identifier through NMLS.

(b) The commissioner shall periodically examine the books and activities of nonprofit organizations as defined in section 454F-1 and shall revoke an organization’s registration as a nonprofit organization with NMLS if the nonprofit organization fails to meet the requirements to be a nonprofit organization.

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

- (1) The interest rate that the home loan would carry;
- (2) The charges that are imposed on the borrower for origination, application, closing, and other costs;
- (3) Whether the mortgage includes any predatory characteristics;
- (4) The borrower’s ability to repay the loan; and
- (5) The term of the mortgage.

(d) A nonprofit organization shall designate an employee who shall have the duty to directly manage and supervise the mortgage loan origination activity of the nonprofit organization, including:

- (1) The maintenance of all records, contracts, and documents of the nonprofit organization relating to mortgage loan origination activity;
- (2) All mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the nonprofit organization’s employees, or by independent contractors located at or working out of the nonprofit organization; and
- (3) All employees of the nonprofit organization, and all independent contractors of the nonprofit organization located at or working

out of the nonprofit organization, who are working on or handling mortgage loan origination activity of the nonprofit organization.”

SECTION 11. 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 or its designee on operators of adult foster homes for individuals with developmental disabilities or developmental disabilities domiciliary homes and their employees, as provided by section 321-15.2;
- (2) The department of health or its designee 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 or health care services as provided by section 321-171.5;
- (3) The department of health or its designee on all applicants for licensure or certification for, operators for, prospective employees, adult volunteers, and all adults, except adults in care, at healthcare facilities as defined in 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 county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- (8) 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;
- (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (10) The department of human services or its designee on applicants to operate child care facilities, household members of the applicant, prospective employees of the applicant, and new employees and household members of the provider after registration or licensure as provided by section 346-154, and persons subject to section 346-152.5;
- (11) 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;
- (12) The department of health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as provided by section 321-15.2;
- (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (14) 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 pro-

- viding services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (16) 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;
 - (17) The board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;
 - (18) 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 pursuant to section 302C-1;
 - (19) 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;
 - (20) 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;
 - (21) The department of health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 321-15.2;
 - (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult protective and community services branch, as provided by section 346-97;
 - (23) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
 - (24) 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;
 - (25) 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;
 - (26) 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;
 - (27) 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;
 - (28) The department of commerce and consumer affairs on:

- (A) Each principal of every non-corporate applicant for a money transmitter license;
 - (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; and
 - (C) The persons who are to assume control of a money transmitter licensee in connection with an application requesting approval of a proposed change in control of licensee, as provided by sections 489D-9 and 489D-15;
- (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (30) The Hawaii health systems corporation on:
- (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (31) The department of commerce and consumer affairs on:
- (A) An applicant for a mortgage loan originator license~~[-and]~~, or license renewal; and
 - (B) Each control person, executive officer, director, general partner, and ~~[manager]~~ managing member of an applicant for a mortgage loan originator company license~~[-]~~ or license renewal, as provided by chapter 454F;
- (32) The state public charter school commission or public charter schools on employees, teacher trainees, prospective employees, and prospective teacher trainees in any public charter school for any position that places them in close proximity to children, as provided in section 302D-33;
- (33) The counties on prospective employees who work with children, vulnerable adults, or senior citizens in community-based programs;
- (34) The counties on prospective employees for fire department positions which involve contact with children or vulnerable adults;
- (35) The counties on prospective employees for emergency medical services positions which involve contact with children or vulnerable adults;
- (36) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable citizens during emergencies or crises;
- (37) The State and counties on employees, prospective employees, volunteers, and contractors whose position responsibilities require unescorted access to secured areas and equipment related to a traffic management center;
- (38) The State and counties on employees and prospective employees whose positions involve the handling or use of firearms for other than law enforcement purposes;
- (39) The State and counties on current and prospective systems analysts and others involved in an agency's information technology operation whose position responsibilities provide them with access to proprietary, confidential, or sensitive information;

- (40) The department of commerce and consumer affairs on applicants for real estate appraiser licensure or certification as provided by chapter 466K;
- (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 will be in charge of the escrow depository's activities upon licensure; and
 - (B) Each of the controlling persons of an applicant for proposed change in control of an escrow depository licensee, and each of the officers, directors, and principals who will be in charge of the licensee's activities upon approval of such application, as provided by chapter 449; and
- ~~(45)~~ Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

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

SECTION 13. This Act shall take effect on September 1, 2017.
 (Approved July 10, 2017.)