VETO

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 1218 S.D. 2 H.D. 2 C.D. 1

A BILL FOR AN ACT

VETO OVERRIDE

ACT No. 32
Approved: [illegible]
Dated: July 15, 2009

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

1 transition from the current licensing system under chapter 454,
2 Hawaii Revised Statutes, to the new federally-mandated
3 regulatory system that will become effective July 1, 2010. The
4 legislature finds that this measure provides for an orderly
5 one-year transition period where chapter 454 will continue to
6 control licensing and oversight while the division of financial
7 institutions of the department of commerce and consumer affairs
8 enacts the necessary rules and procedures to fully implement the
9 regulatory system created by this Act. The legislature further
10 finds that the July 1, 2010 implementation of the new regulatory
11 system created by this Act requires the cooperation of the
12 commissioner of financial institutions. Therefore, the
13 legislature respectfully asks that the commissioner of financial
14 institutions collaborate openly and in good faith with the
15 legislature to ensure a smooth transition to the new regulatory
16 system, which shall become effective on July 1, 2010.
17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to title 22 to be appropriately designated
19 and to read as follows:
20 **"CHAPTER**
21 **SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT**

1 § -1 **Definitions.** In this chapter, unless the context
2 or subject matter otherwise requires:
3 "Advertisement" or "advertising" means:
4 (1) Issuing any card, sign, or device to any person;
5 (2) Causing, permitting, or allowing the placement of any
6 sign or marking on or in any building, vehicle, or
7 structure;
8 (3) Placing an advertisement in any newspaper, magazine,
9 or on the Internet;
10 (4) Listing or advertising in any directory under a
11 classification or heading that includes the words
12 "mortgage loan originator," or the like;
13 (5) Broadcasting commercials by airwave or internet
14 transmission; or
15 (6) Transmitting any written communication, including:
16 (A) A letter or a postcard that encourages a person
17 to borrow from or through a mortgage loan
18 originator; or
19 (B) A written communication that encourages a person
20 to refinance the person's existing residential
21 mortgage loan and mentions that a new residential
22 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.

1 "Immediate family member" means a spouse, child, sibling,
2 parent, grandparent, grandchild, stepparent, stepchild,
3 stepsibling, and equivalent adoptive relationships.
4 "Individual" means a natural person.
5 "Insured depository institution" means the same as in 12
6 United States Code Section 1813(c)(2); provided that it also
7 includes any credit union whose deposits are insured by the
8 National Credit Union Association.
9 "Loan processor or underwriter" means an individual who
10 performs clerical or support duties as an employee at the
11 direction of and subject to the supervision and instruction of a
12 mortgage loan originator or a person who is exempt from
13 licensing as a mortgage loan originator under this chapter.
14 "Mortgage loan originator" means an individual who for
15 compensation or gain or in the expectation of compensation or
16 gain:
17 (1) Takes a residential mortgage loan application; or
18 (2) Offers or negotiates terms of a residential mortgage
19 loan.
20 "Nationwide Mortgage Licensing System" means a mortgage
21 licensing system developed and maintained by the Conference of
22 State Bank Supervisors and the American Association of

1 Residential Mortgage Regulators for the licensing and
2 registration of licensed mortgage loan originators.
3 "Nontraditional mortgage product" means any mortgage
4 product other than a thirty-year fixed rate residential mortgage
5 loan where the interest rate is fixed for the thirty-year term.
6 "Person" means an individual, sole proprietorship,
7 partnership, corporation, limited liability company, limited
8 liability partnership, or other association of individuals,
9 however organized.
10 "Real estate brokerage activity" means any activity that
11 involves offering or providing real estate brokerage services to
12 the public, including:
13 (1) Acting as a real estate agent or real estate broker
14 for a buyer, seller, lessor, or lessee of real
15 property;
16 (2) Bringing together parties interested in the sale,
17 purchase, lease, rental, or exchange of real property;
18 (3) Negotiating on behalf of any party, any portion of a
19 contract relating to the sale, purchase, lease,
20 rental, or exchange of real property other than in
21 connection with providing financing with respect to
22 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

1 mortgage, deed of trust, or other equivalent consensual security
2 interest on a dwelling as defined in Section 103(v) of the Truth
3 in Lending Act, 15 United States Code Section 1601 et seq, or
4 residential real estate.
5 "Residential real estate" means any real property located
6 in this state, upon which a dwelling is constructed or intended
7 to be constructed.
8 "Unique identifier" means a number or other identifier
9 assigned by protocols established by the Nationwide Mortgage
10 Licensing System.
11 § -2 **Exemptions.** This chapter shall not apply to the
12 following:
13 (1) A registered mortgage loan originator, when acting for
14 an insured depository institution, a subsidiary of an
15 insured depository institution regulated by a federal
16 banking agency, or an institution regulated by the
17 Farm Credit Administration;
18 (2) Any individual who offers or negotiates terms of a
19 residential mortgage loan with, or on behalf of, an
20 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,

1 shall not engage in the business of a mortgage loan originator
2 with respect to any dwelling located in this state without first
3 obtaining and maintaining annually, a license under this
4 chapter. Each licensed mortgage loan originator shall register
5 with and maintain a valid unique identifier issued by the
6 Nationwide Mortgage Licensing System, and shall submit to the
7 Nationwide Mortgage Licensing System any reports that shall be
8 in a form and contain information as the Nationwide Mortgage
9 Licensing System may require.
10 **§ -4 License and registration; application; issuance.**
11 (a) Applicants for a license shall apply in a form as
12 prescribed by the commissioner.
13 (b) To fulfill the purposes of this chapter, the
14 commissioner shall establish relationships or contracts with the
15 Nationwide Mortgage Licensing System or other entities
16 designated by the Nationwide Mortgage Licensing System to
17 collect and maintain records and process transaction fees or
18 other fees related to licensees or other persons subject to this
19 chapter.
20 (c) For the purpose and the extent necessary to
21 participate in the Nationwide Mortgage Licensing System, the
22 commissioner may waive or modify, in whole or in part, by rule

1 or order, any or all of the requirements of this chapter and to
2 establish new requirements as reasonably necessary to
3 participate in the Nationwide Mortgage Licensing System.
4 (d) In connection with an application for licensing as a
5 mortgage loan originator, the applicant, at a minimum, shall
6 furnish to the Nationwide Mortgage Licensing System information
7 concerning the applicant's identity, including:
8 (1) Fingerprints for submission to the Federal Bureau of
9 Investigation, and any governmental agency or entity
10 authorized to receive the fingerprints for a state,
11 national, and international criminal history
12 background check; and
13 (2) Personal history and experience in a form prescribed
14 by the Nationwide Mortgage Licensing System including
15 the submission of authorization for the Nationwide
16 Mortgage Licensing System and the commissioner to
17 obtain:
18 (A) An independent credit report obtained from a
19 consumer reporting agency described in Section
20 603(p) of the Fair Credit Reporting Act, 15
21 United States Code 1681 et seq; and

1 (B) Information related to any administrative, civil,
2 or criminal findings by any governmental
3 jurisdiction.
4 (e) The commissioner may use the Nationwide Mortgage
5 Licensing System as an agent for requesting information from and
6 distributing information to the Department of Justice or any
7 governmental agency.
8 (f) The commissioner may use the Nationwide Mortgage
9 Licensing System as an agent for requesting and distributing
10 information to and from any source directed by the commissioner.
11 § -5 **Issuance of license.** The commissioner shall not
12 issue a mortgage loan originator license unless the commissioner
13 makes at a minimum the following findings:
14 (1) The applicant has never had a mortgage loan originator
15 license revoked in any jurisdiction; provided that a
16 subsequent formal vacation of a revocation shall not
17 be deemed a revocation;
18 (2) The applicant has not been convicted of, or pled
19 guilty or nolo contendere, or been granted a deferred
20 acceptance of a guilty plea under chapter 853 to a
21 felony in a domestic, foreign, or military court:

1 (A) During the seven-year period preceding the date
2 of the application for licensing and
3 registration; or
4 (B) At any time preceding the date of application, if
5 the felony involved an act of fraud, dishonesty,
6 breach of trust, or money laundering;
7 provided that any pardon of a conviction shall not be
8 deemed a conviction for purposes of this section;
9 (3) The applicant has demonstrated financial
10 responsibility, character, and general fitness to
11 command the confidence of the community and to warrant
12 a determination that the mortgage loan originator
13 shall operate honestly, fairly, and efficiently
14 pursuant to this chapter. For purposes of this
15 paragraph, a person is not financially responsible
16 when the person has shown a disregard in the
17 management of the person's financial condition. A
18 determination that an individual has not shown
19 financial responsibility may be based on:
20 (A) Current outstanding judgments, except judgments
21 solely as a result of medical expenses;

1 (B) Current outstanding tax liens or other government
2 liens and filings;
3 (C) Foreclosures within the past three years; and
4 (D) A pattern of seriously delinquent accounts within
5 the past three years;
6 (4) The applicant has completed the pre-licensing
7 education requirement described in section -6;
8 (5) The applicant has passed a written test that meets the
9 test requirements in section -7; and
10 (6) The applicant has met the surety bond requirement as
11 required in section -13.
12 § -6 **Pre-licensing and re-licensing; education of**
13 **mortgage loan originators.** (a) A person shall complete at
14 least twenty hours of pre-licensing education approved in
15 accordance with subsection (b) that includes:
16 (1) Three hours of federal law and regulations;
17 (2) Three hours of ethics, that shall include instruction
18 on fraud, consumer protection, and fair lending
19 issues; and
20 (3) Two hours of training related to lending standards for
21 the nontraditional mortgage product marketplace.

1 (b) Pre-licensing education courses shall be reviewed and
2 approved by the Nationwide Mortgage Licensing System based upon
3 reasonable standards. Review and approval of a pre-licensing
4 education course shall include review and approval of the course
5 provider.
6 (c) Nothing in this section shall prohibit the use of any
7 pre-licensing education course approved by the Nationwide
8 Mortgage Licensing System that is provided by the employer of
9 the applicant, an entity that is affiliated with the applicant
10 by an agency contract, or any subsidiary or affiliate of the
11 employer or entity.
12 (d) Pre-licensing education may be offered either in a
13 classroom, online, or by any other means approved by the
14 Nationwide Mortgage Licensing System.
15 (e) The pre-licensing education requirements approved by
16 the Nationwide Mortgage Licensing System in subsection (a) for
17 any state shall be accepted as credit towards completion of pre-
18 licensing education requirements in this State.
19 (f) A person previously licensed under this chapter and
20 applying to be licensed under this chapter shall prove to the
21 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.

1 (c) Nothing in this section shall prohibit a test provider
2 approved by the Nationwide Mortgage Licensing System from
3 providing a test at the location of the employer of the
4 applicant, the location of any subsidiary or affiliate of the
5 employer of the applicant, or the location of any entity with
6 which the applicant holds an exclusive arrangement to conduct
7 the business of a mortgage loan originator.
8 (d) An individual shall have passed a qualified written
9 test if the individual achieves a test score of seventy-five per
10 cent of the correct answers to questions or better. An
11 individual may retake a test three consecutive times with each
12 consecutive taking occurring at least thirty days after the
13 preceding test. After failing three consecutive tests, an
14 individual shall wait at least six months before taking the test
15 again. A licensed mortgage loan originator who fails to
16 maintain a valid license for a period of five years or longer
17 not taking into account any time during which the individual is
18 a registered mortgage loan originator, shall retake the test.
19 § -8 **Standards for license renewal.** (a) The minimum
20 standards for license renewal for mortgage loan originators
21 shall include the following:

1 (1) The mortgage loan originator continues to meet the
2 minimum standards for licensure under section -5;
3 (2) The mortgage loan originator has satisfied the annual
4 continuing education requirements in section -9;
5 and
6 (3) The mortgage loan originator has paid all required
7 fees for renewal of the license.
8 (b) The license of a mortgage loan originator who fails to
9 satisfy the minimum standards for license renewal shall expire.
10 The commissioner may adopt procedures for the reinstatement of
11 expired licenses consistent with the standards established by
12 the Nationwide Mortgage Licensing System.
13 **§ -9 Continuing education; mortgage loan originators.**
14 (a) Each year, a licensed mortgage loan originator shall
15 complete at least eight hours of education approved in
16 accordance with subsection (b) that shall include at least:
17 (1) Three hours of federal law and regulations;
18 (2) Two hours of ethics that shall include instruction on
19 fraud, consumer protection, and fair lending issues;
20 and
21 (3) Two hours of training related to lending standards for
22 the nontraditional mortgage product marketplace.

1 (b) For purposes of subsection (a), continuing education
2 courses shall be reviewed and approved by the Nationwide
3 Mortgage Licensing System based upon reasonable standards.
4 Review and approval of a continuing education course shall
5 include review and approval of the course provider.
6 (c) Nothing in this section shall prohibit the use of any
7 education course that is approved by the Nationwide Mortgage
8 Licensing System and provided by the employer of the mortgage
9 loan originator, an entity that is affiliated with the mortgage
10 loan originator by an agency contract, or any subsidiary or
11 affiliate of the employer or entity.
12 (d) Continuing education may be offered either in a
13 classroom, online, or by any other means approved by the
14 nationwide mortgage licensing system and registry.
15 (e) A licensed mortgage loan originator:
16 (1) May only receive credit for a continuing education
17 course in the year in which the course is taken,
18 except for continuing education credits received
19 pursuant to this chapter; and
20 (2) May not take the same approved course in the same or
21 successive years to meet the annual requirements for
22 continuing education.

1 (f) A licensed mortgage loan originator who is an approved
2 instructor of an approved continuing education course may
3 receive continuing education credit for the course taught at the
4 rate of two hours credit for every one hour taught.
5 (g) Continuing education courses as described in
6 subsection (a) and approved by the Nationwide Mortgage Licensing
7 System for any state, that are successfully completed by a
8 licensed mortgage originator, shall be accepted as credit
9 towards completion of continuing education requirements in this
10 state.
11 (h) A licensed mortgage loan originator who subsequently
12 becomes unlicensed shall complete the continuing education
13 requirements for the last year in which the license was held
14 prior to issuance of a new or renewed license.
15 (i) A person meeting the requirements of
16 section -8(a)(1) and (3) may make up any deficiency in
17 continuing education as established by rule adopted by the
18 commissioner.
19 § -10 **Authority to require license.** In addition to any
20 other duties imposed upon the commissioner, the commissioner
21 shall require mortgage loan originators to be licensed and
22 registered through the Nationwide Mortgage Licensing System.

1 The commissioner is authorized to participate in the Nationwide
2 Mortgage Licensing System. The commissioner may establish by
3 rule pursuant to chapter 91, requirements for mortgage loan
4 originators, including:
5 (1) Background checks of:
6 (A) Criminal history through fingerprint or other
7 databases;
8 (B) Civil or administrative records;
9 (C) Credit history; and
10 (D) Any other source deemed necessary by the
11 Nationwide Mortgage Licensing System and
12 registry;
13 (2) Fees to apply for or renew licenses through the
14 Nationwide Mortgage Licensing System;
15 (3) The setting or resetting as necessary of license
16 renewal and reporting dates;
17 (4) Requirements for amending or surrendering a license;
18 and
19 (5) Any other activity the commissioner deems necessary to
20 participate in the Nationwide Mortgage Licensing
21 System.

1 § -11 **Nationwide Mortgage Licensing System; registry**
2 **information; challenge process.** The commissioner shall
3 establish a process by rule pursuant to chapter 91 whereby
4 mortgage loan originators may challenge information entered into
5 the Nationwide Mortgage Licensing System by the commissioner.
6 § -12 **Enforcement authorities; violations; penalties.**
7 (a) In order to ensure the effective supervision and
8 enforcement of this chapter, the commissioner may, pursuant to
9 chapter 91:
10 (1) Deny, suspend, revoke, condition, or decline to renew
11 a license because of a violation of this chapter,
12 rules, an order, or a directive entered under this
13 chapter;
14 (2) Deny, suspend, revoke, condition, or decline to renew
15 a license if an applicant or licensed mortgage loan
16 originator fails at any time to meet the requirements
17 of section -6 or section -8, or withholds
18 information or makes a material misstatement in an
19 application for a license or renewal of a license;
20 (3) Order restitution against persons subject to this
21 chapter for violations of this chapter;
22 (4) Impose fines on persons subject to this chapter; and

1 (5) Issue orders or directives under this chapter as
2 follows:
3 (A) Order or direct persons subject to this chapter
4 to cease and desist from conducting business,
5 including immediate temporary orders to cease and
6 desist;
7 (B) Order or direct persons subject to this chapter
8 to cease any harmful activities or violations of
9 this chapter, including immediate temporary
10 orders to cease and desist;
11 (C) Enter immediate temporary orders to cease doing
12 business under a license or interim license
13 issued pursuant to the authority granted under
14 this chapter if the commissioner determines that
15 the license was erroneously granted or the
16 licensee is currently in violation of this
17 chapter; or
18 (D) Order or direct any other affirmative action as
19 the commissioner deems necessary.
20 (b) The commissioner may impose a civil penalty on a
21 mortgage loan originator or person subject to this chapter if
22 the commissioner finds on the record after notice and

1 opportunity for hearing that the mortgage loan originator or
2 person subject to this chapter has violated or failed to comply
3 with any requirement of this chapter or any rule prescribed by
4 the commissioner under this chapter or order issued under the
5 authority of this chapter.
6 (c) The maximum penalty for each act or omission described
7 in subsection (b) shall be $25,000.
8 (d) Each violation or failure to comply with any directive
9 or order of the commissioner shall be a separate and distinct
10 violation.
11 § -13 **Surety bond; required.** (a) Each mortgage loan
12 originator shall be covered by a surety bond in accordance with
13 this section. In the event that the mortgage loan originator is
14 an employee or exclusive agent of a person subject to this
15 chapter, the surety bond of the person may be used in lieu of
16 the mortgage loan originator's surety bond.
17 (b) The surety bond shall provide coverage for each
18 mortgage loan originator in an amount prescribed in subsection
19 (c). The surety bond shall be in a form as prescribed by the
20 commissioner. The commissioner may adopt rules pursuant to
21 chapter 91 with respect to the requirements for the surety bonds
22 necessary to accomplish the purposes of this chapter.

1 (c) The penal sum of the surety bond shall be maintained
2 in an amount that reflects the dollar amount of loans originated
3 as determined by the commissioner.
4 (d) When an action is commenced on a licensee's bond, the
5 commissioner may require the filing of a new bond.
6 (e) Immediately upon recovery of any action on the bond,
7 the commissioner may require the filing of a new bond.
8 **§ -14 Confidentiality.** (a) Except as otherwise
9 provided in Public Law 110-289, Section 1512, the requirements
10 under any federal or state law regarding the privacy or
11 confidentiality of any information or material provided to the
12 Nationwide Mortgage Licensing System, and any privilege arising
13 under federal or state law, including the rules of any federal
14 or state court, with respect to the information or material
15 shall continue to apply to the information or material after the
16 information or material has been disclosed to the Nationwide
17 Mortgage Licensing System. The information and material may be
18 shared with all state and federal regulatory officials with
19 mortgage industry oversight authority without the loss of
20 privilege or the loss of confidentiality protections provided by
21 federal or state law.

1 (b) For these purposes, the commissioner is authorized to
2 enter into agreements or sharing arrangements with other
3 governmental agencies, the Conference of State Bank Supervisors,
4 the American Association of Residential Mortgage Regulators, or
5 other associations representing governmental agencies as
6 established by rule or order of the commissioner.
7 (c) Information or material that is subject to a privilege
8 or confidentiality under subsection (a) shall not be subject to:
9 (1) Disclosure under any federal or state law governing
10 the disclosure to the public of information held by an
11 officer or an agency of the federal government or a
12 state; or
13 (2) Subpoena or discovery, or admission into evidence, in
14 any private civil action or administrative process,
15 unless with respect to any privilege held by the
16 Nationwide Mortgage Licensing System applicable to the
17 information or material; provided that the person to
18 whom the information or material pertains waives, in
19 whole or in part, in the discretion of such person,
20 that privilege.
21 (d) Notwithstanding chapter 92F, the examination process
22 and related information and documents, including the reports of

1 examination, are confidential and are not subject to discovery
2 or disclosure in civil or criminal lawsuits.
3 (e) Notwithstanding any law to the contrary, the
4 disclosure of confidential supervisory information or any
5 information or material described in subsection (a) that is
6 inconsistent with subsection (a) shall be superseded by the
7 requirements of this section.
8 (f) This section shall not apply to information or
9 material relating to the employment history of, and publicly
10 adjudicated disciplinary and enforcement actions against,
11 mortgage loan originators that are included in the Nationwide
12 Mortgage Licensing System for access by the public.
13 § -15 **Investigation and examination authority.** (a) In
14 addition to any other authority under this chapter, the
15 commissioner shall have the authority to conduct investigations
16 and examinations. The commissioner may access, receive, and use
17 any books, accounts, records, files, documents, information, or
18 evidence, including:
19 (1) Criminal, civil, and administrative history
20 information, including nonconviction data under
21 chapter 853;

1 (2) Personal history and experience information including
2 independent credit reports obtained from a consumer
3 reporting agency described in Section 603(p) of the
4 Fair Credit Reporting Act; and
5 (3) Any other documents, information, or evidence the
6 commissioner deems relevant to the inquiry or
7 investigation, regardless of the location, possession,
8 control, or custody of the documents, information, or
9 evidence.
10 (b) For the purposes of investigating violations or
11 complaints arising under this chapter, or for the purposes of
12 examination, the commissioner may review, investigate, or
13 examine any licensed mortgage loan originator, individual, or
14 person subject to this chapter, as often as necessary in order
15 to carry out the purposes of this chapter. The commissioner may
16 direct, subpoena, or order the attendance of, and examine under
17 oath all persons whose testimony may be required about loans or
18 the business or subject matter of any examination or
19 investigation, and may direct, subpoena, or order the person to
20 produce books, accounts, records, files, and any other documents
21 the commissioner deems relevant to the inquiry.

1 (c) Each licensed mortgage loan originator, individual, or
2 person subject to this chapter shall provide to the commissioner
3 upon request, the books and records relating to the operations
4 of the licensee, individual, or person subject to this chapter.
5 The commissioner shall have access to the books and records and
6 shall be permitted to interview the officers, principals,
7 mortgage loan originators, employees, independent contractors,
8 agents, and customers of the licensed mortgage loan originator,
9 individual, or person subject to this chapter concerning their
10 business.
11 (d) Each licensed mortgage loan originator, individual, or
12 person subject to this chapter shall make or compile reports or
13 prepare other information as directed by the commissioner in
14 order to carry out the purposes of this section, including:
15 (1) Accounting compilations;
16 (2) Information lists and data concerning loan
17 transactions in a format prescribed by the
18 commissioner; or
19 (3) Other information deemed necessary to carry out the
20 purposes of this section.
21 (e) In making any examination or investigation authorized
22 by this chapter, the commissioner may control access to any

1 documents and records of the licensed mortgage loan originator
2 or person under examination or investigation. The commissioner
3 may take possession of the documents and records or place a
4 person in exclusive charge of the documents and records in the
5 place where they are usually kept. During the period of
6 control, no individual or person shall remove or attempt to
7 remove any of the documents and records except pursuant to a
8 court order or with the consent of the commissioner. Unless the
9 commissioner has reasonable grounds to believe the documents or
10 records of the licensed mortgage loan originator have been, or
11 are at risk of being altered or destroyed for purposes of
12 concealing a violation of this chapter, the licensed mortgage
13 loan originator or owner of the documents and records shall have
14 access to the documents or records as necessary to conduct its
15 ordinary business affairs.
16 (f) The commissioner may:
17 (1) Retain attorneys, accountants, or other professionals
18 and specialists, who may be exempt from chapter 76, as
19 examiners, auditors, or investigators to conduct or
20 assist in the conduct of examinations or
21 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.

1 (g) The authority of this section shall remain in effect,
2 whether such licensed mortgage loan originator, individual, or
3 person subject to this chapter acts or claims to act under any
4 licensing or registration law of this State, or claims to act
5 without such authority.
6 (h) No licensed mortgage loan originator, individual, or
7 person subject to investigation or examination under this
8 section may knowingly withhold, abstract, remove, mutilate,
9 destroy, or secrete any books, records, computer records, or
10 other information.
11 (i) The commissioner may charge an examination fee based
12 upon the cost per hour per examiner for all mortgage loan
13 originators examined by the commissioner or the commissioner's
14 staff. The hourly fee shall be $40 or an amount as the
15 commissioner shall establish by rule pursuant to chapter 91.
16 § -16 **Mortgage call reports.** Each licensed mortgage
17 originator shall submit to the Nationwide Mortgage Licensing
18 System reports of condition, using the form entitled "REPORT OF
19 CONDITION", which shall be in such form and contain such
20 information as the Nationwide Mortgage Licensing System may
21 require.

1 § -17 **Prohibited practices.** It shall be a violation of
2 this chapter for a mortgage loan originator to:
3 (1) Directly or indirectly employ any scheme, device, or
4 artifice to defraud or mislead borrowers or lenders or
5 to defraud any person;
6 (2) Engage in any unfair or deceptive practice toward any
7 person;
8 (3) Obtain property by fraud or misrepresentation;
9 (4) Solicit or enter into any contract with a borrower
10 that provides in substance that the person or
11 individual subject to this chapter may earn a fee or
12 commission through "best efforts" to obtain a loan
13 even though no loan is actually obtained for the
14 borrower;
15 (5) Solicit, advertise, or enter into a contract for
16 specific interest rates, points, or other financing
17 terms unless the terms are actually available at the
18 time of soliciting, advertising, or contracting;
19 (6) Conduct any business covered by this chapter without
20 holding a valid license as required under this
21 chapter, or assist or aid and abet any person in the

1 conduct of business under this chapter without a valid
2 license as required under this chapter;
3 (7) Fail to make disclosures as required by this chapter
4 and any other applicable state or federal law
5 including rules or regulations thereunder;
6 (8) Fail to comply with this chapter or rules adopted
7 under this chapter, or fail to comply with any other
8 state or federal law, including the rules and
9 regulations adopted thereunder, applicable to any
10 business authorized or conducted pursuant to this
11 chapter;
12 (9) Make, in any manner, any false or deceptive statement
13 or representation, including with regard to the rates,
14 points, or other financing terms or conditions for a
15 residential mortgage loan, or engage in bait and
16 switch advertising;
17 (10) Negligently make any false statement or knowingly and
18 wilfully make any omission of material fact in
19 connection with any information or reports filed with
20 a governmental agency or the Nationwide Mortgage
21 Licensing System or in connection with any

1 investigation conducted by the commissioner or another
2 government agency;
3 (11) Make any payment, threat, or promise, directly or
4 indirectly, to any person for the purposes of
5 influencing the independent judgment of the person in
6 connection with a residential mortgage loan, or make
7 any payment, threat, or promise, directly or
8 indirectly, to any appraiser of a property for the
9 purpose of influencing the independent judgment of the
10 appraiser with respect to the value of a property;
11 (12) Collect, charge, attempt to collect or charge, or use
12 or propose any agreement purporting to collect or
13 charge any fee prohibited by this chapter;
14 (13) Cause or require a borrower to obtain property
15 insurance coverage in an amount that exceeds the
16 replacement cost of the improvements as established by
17 the property insurer;
18 (14) Fail to truthfully account for moneys belonging to a
19 party to a residential mortgage loan transaction; or
20 (15) Deliver a misleading or deceptive communication or
21 advertisement, whether written, electronic, or oral,
22 when marketing or soliciting a residential mortgage

1 loan. A communication or advertisement that uses the
2 name or trademark of a financial institution as
3 defined in section 412:1-109 or its affiliates or
4 subsidiaries, or infers that the communication or
5 advertisement is from, endorsed by, is related to, or
6 is the responsibility of the financial institution is
7 a misleading or deceptive communication. Advertising
8 that a specific interest rate, points, or financial
9 terms are available when the rates, points, or
10 financial terms are not actually available is a
11 misleading or deceptive communication.
12 § -18 **Powers of commissioner.** (a) The commissioner may
13 adopt rules pursuant to chapter 91 as the commissioner deems
14 necessary for the administration of this chapter.
15 (b) In addition to any other powers provided by law, the
16 commissioner shall have the authority to:
17 (1) Administer and enforce the provisions and requirements
18 of this chapter;
19 (2) Adopt, amend, or repeal rules and issue declaratory
20 rulings or informal nonbinding interpretations;

1 (3) Develop requirements for licensure through rules,
2 including establishing the content of the written
3 tests required under section -7;
4 (4) Investigate and conduct hearings regarding any
5 violation of this chapter or any rule or order of, or
6 agreement with, the commissioner;
7 (5) Create fact-finding committees that may make
8 recommendations to the commissioner for the
9 commissioner's deliberations;
10 (6) Require an applicant or any of its officers,
11 directors, employees, partners, members, managers, and
12 agents to disclose their relevant criminal history and
13 request a criminal history record check in accordance
14 with chapter 846;
15 (7) Contract with qualified persons, including
16 investigators who may be exempt from chapter 76 and
17 who shall assist the commissioner in exercising the
18 commissioner's powers and duties;
19 (8) Require that all fees, fines, and charges collected by
20 the commissioner under this chapter be deposited into
21 the compliance resolution fund established pursuant to
22 section 26-9(o);

1 (9) Subpoena witnesses and documents, administer oaths,
2 and receive affidavits and oral testimony, including
3 telephonic communications, and do any and all things
4 necessary or incidental to the exercise of the
5 commissioner's power and duties, including the
6 authority to conduct contested case proceedings under
7 chapter 91; and
8 (10) Require a mortgage loan originator to comply with any
9 rule, guidance, guideline, statement, supervisory
10 policy or any similar proclamation issued or adopted
11 by the Federal Deposit Insurance Corporation to the
12 same extent and in the same manner as a bank chartered
13 by the State or in the alternative, any policy
14 position of the Conference of State Bank Supervisors.
15 § -19 **Unique identifier shown.** The unique identifier of
16 any person originating a residential mortgage loan shall be
17 clearly shown on all residential mortgage loan application
18 forms, solicitations, or advertisements, including business
19 cards or websites, and any other documents as established by
20 rule or order of the commissioner.
21 § -20 **Report to Nationwide Mortgage Licensing System.**
22 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:

1 ""Creditor" means any bank; savings and loan association;
2 trust company; financial services loan company; credit union;
3 mortgage banker, broker, or solicitor; mortgage loan originator;
4 pawnbroker; mutual benefit society or fraternal benefit society;
5 debt adjuster; the issuer of a credit card as defined in section
6 708-800; any person who initiates, extends, renews, or continues
7 loans of money or credit; any person who regularly arranges for
8 the initiation, extension, renewal, or continuation of a loan of
9 money or credit; or any assignee of an original creditor who
10 participates in the decision to grant, extend, renew, or to
11 continue [~~such~~] a loan of money or credit."
12 SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:
14 "(b) Criminal history record checks may be conducted by:
15 (1) The department of health on operators of adult foster
16 homes or developmental disabilities domiciliary homes
17 and their employees, as provided by section 333F-22;
18 (2) The department of health on prospective employees,
19 persons seeking to serve as providers, or
20 subcontractors in positions that place them in direct
21 contact with clients when providing non-witnessed

1 direct mental health services as provided by section
2 321-171.5;
3 (3) The department of health on all applicants for
4 licensure for, operators for, and prospective
5 employees, and volunteers at one or more of the
6 following: skilled nursing facility, intermediate
7 care facility, adult residential care home, expanded
8 adult residential care home, assisted living facility,
9 home health agency, hospice, adult day health center,
10 special treatment facility, therapeutic living
11 program, intermediate care facility for the mentally
12 retarded, hospital, rural health center and
13 rehabilitation agency, and, in the case of any of the
14 above-related facilities operating in a private
15 residence, on any adult living in the facility other
16 than the client as provided by section 321-15.2;
17 (4) The department of education on employees, prospective
18 employees, and teacher trainees in any public school
19 in positions that necessitate close proximity to
20 children as provided by section 302A-601.5;
21 (5) The counties on employees and prospective employees
22 who may be in positions that place them in close

1 proximity to children in recreation or child care
2 programs and services;
3 (6) The county liquor commissions on applicants for liquor
4 licenses as provided by section 281-53.5;
5 (7) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
9 (8) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
12 (9) The department of human services on applicants to
13 operate child care facilities, prospective employees
14 of the applicant, and new employees of the provider
15 after registration or licensure as provided by section
16 346-154;
17 (10) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;
21 (11) The department of human services on operators and
22 employees of home and community-based case management

1 agencies and operators and other adults, except for
2 adults in care, residing in foster family homes as
3 provided by section 346-335;
4 (12) The department of human services on staff members of
5 the Hawaii youth correctional facility as provided by
6 section 352-5.5;
7 (13) The department of human services on employees,
8 prospective employees, and volunteers of contracted
9 providers and subcontractors in positions that place
10 them in close proximity to youth when providing
11 services on behalf of the office or the Hawaii youth
12 correctional facility as provided by section 352D-4.3;
13 (14) The judiciary on employees and applicants at detention
14 and shelter facilities as provided by section 571-34;
15 (15) The department of public safety on employees and
16 prospective employees who are directly involved with
17 the treatment and care of persons committed to a
18 correctional facility or who possess police powers
19 including the power of arrest as provided by section
20 353C-5;

1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section
11 302C-1;
12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section
15 302A-601.5;
16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, vulnerable adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to

1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;
3 (20) The department of human services on licensed adult day
4 care center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 346-97;
7 (21) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult and
10 community care services branch, as provided by section
11 346-97;
12 (22) The department of human services on foster grandparent
13 program, retired and senior volunteer program, senior
14 companion program, and respite companion program
15 participants as provided by section 346-97;
16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (Title 42 United States Code Section
21 1396n(c)), or under any other applicable section or
22 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

1 chapter , Hawaii Revised Statutes, until
2 exhausted.
3 SECTION 9. An individual shall not be subject to chapter
4 454, Hawaii Revised Statutes, upon the effective date of the
5 individual's license under the new chapter established under
6 this Act; provided that this section shall not affect rights and
7 duties that have matured, penalties that were incurred, and
8 proceedings that were begun before the effective date of the
9 individual's license under this Act.
10 SECTION 10. The commissioner of financial institutions
11 shall prepare a report detailing the implementation of this Act.
12 The report shall include an evaluation of administrative rules
13 necessary for the implementation of this Act, budget
14 recommendations, requests for staff and resources, developments
15 in federal law and regulations that affect the implementation of
16 this Act, and guidance or recommendations put forth by the
17 United States Department of Housing and Urban Development. The
18 commissioner of financial institutions shall report findings,
19 recommendations, and any proposed amendments or additions to
20 this Act to the legislature no later than twenty days prior to
21 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.