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# A BILL FOR AN ACT

RELATING TO MORTGAGE INDUSTRY REGULATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to make various  
2 amendments to the mortgage loan originators law, chapter 454F,  
3 Hawaii Revised Statutes, and the mortgage servicers law, chapter  
4 454M, Hawaii Revised Statutes. This measure clarifies the scope  
5 of activities subject to each of the two chapters, which  
6 regulate related industries, including by moving mortgage  
7 servicer provisions that currently appear in chapter 454F to  
8 chapter 454M and deleting provisions and references relating to  
9 servicer companies currently in chapter 454F as this class of  
10 licenses are regulated entirely under chapter 454M. This  
11 measure also makes the terminology used in each chapter  
12 consistent with the other and updates references to controlling  
13 federal laws.

14           SECTION 2. Chapter 454M, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17           "§454M- Confidentiality. (a) Except as otherwise  
18 provided in Public Law 110-289, section 1512, the requirements



1 under any federal or state law regarding the privacy or  
2 confidentiality of any information or material provided to NMLS,  
3 and any privilege arising under federal or state law, including  
4 the rules of any federal or state court, with respect to the  
5 information or material shall continue to apply to the  
6 information or material after the information or material has  
7 been disclosed to NMLS. The information and material may be  
8 shared with all state and federal regulatory officials with  
9 mortgage servicer industry oversight authority without the loss  
10 of privilege or the loss of confidentiality protections provided  
11 by federal or state law.

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

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

20 (1) Disclosure under any federal or state law governing  
21 the disclosure to the public of information held by an



1           officer or an agency of the federal government or a  
2           state; or

3           (2) Subpoena or discovery, or admission into evidence, in  
4           any private civil action or administrative process,  
5           unless with respect to any privilege held by NMLS  
6           applicable to the information or material; provided  
7           that the person to whom the information or material  
8           pertains waives, in whole or in part, in the  
9           discretion of such person, that privilege.

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

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

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



1 mortgage servicers that are included in NMLS for access by the  
2 public."

3 SECTION 3. Section 454F-1, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding four new definitions to be appropriately  
6 inserted and to read:

7 "C.F.R." means the Code of Federal Regulations.

8 "Consumer Financial Protection Bureau" means the Bureau of  
9 Consumer Financial Protection established under title 12 United  
10 States Code chapter 53, subchapter V.

11 "Dwelling" means a residential structure or mobile home  
12 that contains one to four family housing units or individual  
13 units of condominiums or cooperatives.

14 "Mortgage servicer" means a person licensed or required to  
15 be licensed under chapter 454M."

16 2. By amending the definitions of "borrower", "federal  
17 banking agencies", "licensee", "residential mortgage loan", and  
18 "residential mortgage loan modification" to read:

19 "Borrower" means [a person who has applied for] the  
20 obligor, maker, cosigner, or [obtained] guarantor under a  
21 residential mortgage loan [from or through a licensed mortgage



1 ~~loan originator or mortgage loan originator company or from a~~  
2 ~~person required to be licensed as a mortgage loan originator or~~  
3 ~~mortgage loan originator company under this chapter.] agreement.~~  
4 For purposes of this chapter, a borrower is included in the term  
5 consumer.

6 "Federal banking agencies" means the Board of Governors of  
7 the Federal Reserve System, the Comptroller of the Currency,  
8 [~~the Office of Thrift Supervision,~~] the National Credit Union  
9 Administration, and the Federal Deposit Insurance Corporation.

10 "Licensee" means [~~a mortgage loan originator, a mortgage~~  
11 ~~loan originator company, a mortgage servicer company, unless~~  
12 ~~exempt under chapter 454M, or]~~ a person who is licensed or  
13 required to be licensed under this chapter. Licensee does not  
14 include an exempt registered mortgage loan originator, exempt  
15 sponsoring mortgage loan originator company, or nonprofit  
16 organization as defined by this section.

17 "Residential mortgage loan" or [~~"residential mortgage~~  
18 ~~transaction"] "mortgage loan" means any loan primarily for  
19 personal, family, or household use that is secured by a  
20 mortgage, deed of trust, or other equivalent consensual security  
21 interest on a dwelling [~~as defined in section 103(v) of the~~~~



1 ~~Truth in Lending Act, 15 United States Code section 1602]~~ or  
2 residential real estate~~[-]~~ upon which is constructed or intended  
3 to be constructed a dwelling, and includes refinancings, reverse  
4 mortgages, home equity lines of credit, and other first and  
5 additional lien loans that meet the qualifications listed in  
6 this definition.

7 "Residential [~~mortgage~~] loan modification" or "loan  
8 modification" means~~[-~~

9 ~~(1) Modification of]~~ a temporary or permanent change to  
10 the terms of a borrower's existing residential  
11 mortgage [~~loans which generally includes a change in~~  
12 ~~interest, principal, or term of loan; or~~

13 ~~(2) The processing of the approval of loan assumptions.]~~  
14 loan agreement, mutually agreed to between a borrower  
15 and a lender.

16 [~~"Residential mortgage loan modification" does not include~~  
17 ~~origination of mortgage loans.] "~~

18 3. By deleting the definition of "loan modification".

19 [~~"Loan modification" means a temporary or permanent change~~  
20 ~~to the terms of a borrower's existing loan agreement, mutually~~  
21 ~~agreed to between a borrower and a lender."]~~



1 4. By deleting the definition of "mortgage servicer  
2 company".

3 [~~"Mortgage servicer company" means a mortgage servicer  
4 company licensed, or required to be licensed, under chapter 454M  
5 that conducts mortgage loan origination activity."~~]

6 SECTION 4. Section 454F-1.5, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) All mortgage loan originators, mortgage loan  
9 originator companies, exempt registered mortgage loan  
10 originators, exempt sponsoring mortgage loan originator  
11 companies, nonprofit organizations, [~~mortgage servicer~~  
12 ~~companies,~~] and every other person in this State that originates  
13 a residential mortgage loan, unless exempt under section 454F-2,  
14 shall register with NMLS."

15 SECTION 5. Section 454F-1.6, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "§454F-1.6 Presumption of control. An individual is  
18 presumed to control a mortgage loan originator company [~~or a~~  
19 ~~mortgage servicer company~~] if that individual is a director,  
20 general partner, managing member, or executive officer who  
21 directly or indirectly has the right to vote ten per cent or



1 more of a class of voting securities or has the power to sell or  
2 direct the sale of ten per cent or more of a class of voting  
3 securities of that [~~mortgage loan originator company or mortgage~~  
4 ~~servicer company.~~] licensee or applicant."

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

7 "§454F-2 Exemptions. This chapter shall not apply to the  
8 following:

- 9 (1) An exempt registered mortgage loan originator when  
10 acting for an insured depository institution or an  
11 institution regulated by the Farm Credit  
12 Administration[+], except as otherwise provided by  
13 this chapter;
- 14 (2) A licensed attorney who negotiates the terms of a  
15 residential mortgage loan on behalf of a client as an  
16 ancillary matter to the attorney's representation of  
17 the client unless the attorney is compensated by a  
18 lender, a mortgage loan originator company, or other  
19 mortgage loan originator or by an agent of a lender,  
20 mortgage loan originator company, or other mortgage  
21 loan originator;





1 (3) A person or entity that only performs real estate  
2 brokerage activities and is licensed or registered by  
3 the State unless the person or entity is compensated  
4 by a lender, a mortgage loan originator company, or  
5 other mortgage loan originator or by an agent of the  
6 lender, mortgage loan originator company, or other  
7 mortgage loan originator;

8 (4) A person or entity solely involved in extensions of  
9 credit relating to timeshare plans, as the term is  
10 defined in title 11 United States Code section  
11 101(53D);

12 (5) An exempt sponsoring mortgage loan originator company  
13 as defined by this chapter except as otherwise  
14 provided by this chapter;

15 (6) An insured depository institution;

16 (7) An institution regulated by the Farm Credit  
17 Administration;

18 (8) Employees of government agencies or of housing finance  
19 agencies who act as mortgage loan originators; or

20 ~~[-9- A mortgage servicer company that is exempt from~~  
21 ~~chapter 454M, pursuant to section 454M-3; or~~



- 1     ~~(10)~~] (9) A seller of real property who offers or  
2           negotiates terms of a residential mortgage loan that  
3           is financed by the seller and secured by the seller's  
4           own real property; provided that:
- 5           (A) The seller is a person, estate, or trust that  
6                 transacts three or fewer residential mortgage  
7                 loans in one calendar year;
- 8           (B) The seller is not a loan originator for purposes  
9                 of the loan originator qualification requirements  
10                in 12 [~~Code of Federal Regulations~~] C.F.R.  
11                section 1026.36(f) and (g);
- 12           (C) The seller has not constructed or acted as the  
13                 construction contractor for the residence on the  
14                 property in the ordinary course of the seller's  
15                 business;
- 16           (D) The interest rate for the loan does not exceed  
17                 the State's usury limit; provided that the  
18                 exemptions from usury specified in section 478-8  
19                 shall not apply to transactions subject to this  
20                 paragraph;



- 1 (E) The seller shall provide to the buyer the terms  
2 of the financing including:
- 3 (i) A current title search including any liens  
4 against the property;
  - 5 (ii) The interest rate;
  - 6 (iii) Monthly principal and interest payments;
  - 7 (iv) Any prepayment penalty;
  - 8 (v) Any late payment charges;
  - 9 (vi) The payment schedule;
  - 10 (vii) The total amount of interest that the  
11 mortgagor will pay over the term of the loan  
12 expressed as a percentage of the loan  
13 amount;
  - 14 (viii) A calculation of projected aggregate monthly  
15 payments including principal and interest;
  - 16 (ix) Estimated closing costs if closing costs are  
17 included in loan costs and estimated cash to  
18 close if closing costs are not included in  
19 loan costs. For purposes of this paragraph,  
20 closing costs shall include recording fees,  
21 transfer taxes, prepaid costs such as



1 homeowner's insurance premiums or property  
2 taxes, and appraisal costs charged to the  
3 mortgagor;

4 (x) The seller's contact information including  
5 name, address, phone number, electronic mail  
6 address, and alternate contact information  
7 to the extent available; and

8 (xi) A statement that the seller will acquire a  
9 security interest in the buyer's dwelling  
10 and that the buyer may lose the dwelling in  
11 the event of a loan default;

12 (F) The seller shall provide a disclaimer, to be  
13 initialed by the buyer, which states, "BUYER  
14 ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER  
15 IN THIS TRANSACTION AND GRANTING THE SELLER A  
16 MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES  
17 SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING  
18 BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF  
19 BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT  
20 THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND  
21 OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT



1                   ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS  
2                   FULLY ADVISED IN THIS MATTER."; and

3                   (G) A residential mortgage loan shall be recorded  
4                   with the land court or bureau of conveyances as  
5                   applicable."

6                   SECTION 7. Section 454F-3, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8                   "(a) Effective January 1, 2011, or such later date  
9 approved by the United States Department of Housing and Urban  
10 Development pursuant to the authority granted under Public Law  
11 110-289, section 1508(e), title 12 United States Code section  
12 5107(e), a person, unless specifically exempted from this  
13 chapter, shall not engage in the business of a mortgage loan  
14 originator or mortgage loan originator company with respect to  
15 any dwelling located in this State without first obtaining and  
16 maintaining annually, a license under this chapter. Each  
17 licensed mortgage loan originator[, or mortgage loan originator  
18 company[, ~~or mortgage servicer company~~] shall register with and  
19 maintain a valid unique identifier issued by NMLS and shall  
20 submit to NMLS any reports that shall be in a form and contain  
21 information as NMLS may require."



1 SECTION 8. Section 454F-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The commissioner shall not issue a license pursuant  
4 to this chapter unless the commissioner makes at a minimum the  
5 following findings:

6 (1) The applicant, [~~is~~] or in the case of an applicant  
7 that is not an individual, each of the applicant's  
8 control persons, executive officers, directors,  
9 general partners, and managing members, has never had  
10 a mortgage loan originator or a mortgage loan  
11 originator company license revoked in any  
12 jurisdiction; provided that a subsequent formal  
13 vacation of a revocation shall not be deemed a  
14 revocation;

15 (2) The applicant, [~~is~~] or in the case of an applicant  
16 that is not an individual, each of the applicant's  
17 control persons, executive officers, directors,  
18 general partners, and managing members, has not been  
19 convicted of, or pled guilty or nolo contendere, or  
20 been granted a deferred acceptance of a guilty plea



1 under federal law or under chapter 853 to a felony in  
2 a domestic, foreign, or military court:

3 (A) During the seven-year period preceding the date  
4 of the application for licensing and  
5 registration; or

6 (B) At any time preceding the date of application, if  
7 the felony involved an act of fraud, dishonesty,  
8 breach of trust, or money laundering;

9 provided that any pardon of a conviction shall not be  
10 deemed a conviction for purposes of this section;

11 (3) The applicant, [~~is~~] or in the case of an applicant  
12 that is not an individual, each of the applicant's  
13 control persons, executive officers, directors,  
14 general partners, and managing members, has  
15 demonstrated financial responsibility, character, and  
16 general fitness to command the confidence of the  
17 community and to warrant a determination that the  
18 applicant shall operate honestly, fairly, and  
19 efficiently pursuant to this chapter. For purposes of  
20 this paragraph, a person is not financially  
21 responsible when the person has shown a disregard in



1 the management of the person's financial condition. A  
2 determination that a person has shown a disregard in  
3 the management of the person's financial condition may  
4 be based on:

- 5 (A) Current outstanding judgments, except judgments  
6 solely as a result of medical expenses;
- 7 (B) Current outstanding tax liens or other government  
8 liens and filings;
- 9 (C) Foreclosures within the past three years; and
- 10 (D) A pattern of seriously delinquent accounts within  
11 the past three years;

12 (4) The applicant, ~~[if]~~ or in the case of an applicant  
13 that is not an individual, each of the applicant's  
14 control persons, executive officers, directors,  
15 general partners, and managing members, has not been  
16 convicted of, plead guilty or nolo contendere to, or  
17 been granted a deferred acceptance of a guilty plea  
18 under federal law or chapter 853 to any misdemeanor  
19 involving an act of fraud, dishonesty, breach of  
20 trust, or money laundering;





1 (5) The applicant, [~~if~~] or in the case of an applicant  
2 that is not an individual, each individual mortgage  
3 loan originator who is employed by the mortgage loan  
4 originator company or who provides exclusive services  
5 to the applicant as a mortgage loan originator, has  
6 completed the pre-licensing education requirement  
7 described in section 454F-6;

8 (6) The applicant, [~~if~~] or in the case of an applicant  
9 that is not an individual, each individual mortgage  
10 loan originator who is employed by the mortgage loan  
11 originator company or who provides exclusive services  
12 to the applicant as a mortgage loan originator, has  
13 passed a written test that meets the test requirements  
14 in section 454F-7; and

15 (7) The applicant has met the mortgage loan recovery fund  
16 requirement as required in section 454F-41."

17 SECTION 9. Section 454F-6, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) An applicant for licensure as a mortgage loan  
20 originator shall complete at least twenty hours of pre-licensing



1 education approved in accordance with subsection (b) that  
2 includes:

- 3 (1) Three hours of federal law and regulations and three  
4 hours of [~~state~~] the State's law and rules;  
5 (2) Three hours of ethics, [~~that~~] which shall include  
6 instruction on fraud, consumer protection, and fair  
7 lending issues; and  
8 (3) Two hours of training related to lending standards for  
9 the nontraditional mortgage product marketplace.

10 Upon completion of the pre-licensing education, an individual  
11 has up to twelve months to submit an application for licensure  
12 as a mortgage loan originator. An individual who submits an  
13 application after the twelve months have expired will be  
14 required to repeat the pre-licensing education requirements."

15 SECTION 10. Section 454F-7, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

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

- 21 (1) Ethics;



- 1 (2) Federal law and regulations pertaining to mortgage  
2 origination;
- 3 (3) [~~State~~] The State's law and rules pertaining to  
4 mortgage origination; and
- 5 (4) Federal and [~~state~~] the State's law, rules, and  
6 regulations, including instruction on fraud, consumer  
7 protection, the nontraditional mortgage marketplace,  
8 and fair lending issues."

9 SECTION 11. Section 454F-8, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§454F-8 Standards for license renewal. (a) The minimum  
12 standards for license renewal for mortgage loan originators  
13 shall include the following:

- 14 (1) The mortgage loan originator continues to meet the  
15 minimum standards for licensure under section 454F-5;
- 16 (2) The mortgage loan originator has satisfied the annual  
17 continuing education requirements in section 454F-9  
18 prior to requesting renewal; and
- 19 (3) The mortgage loan originator has paid all required  
20 fees for renewal of the license.



1 (b) The minimum standards for license renewal for mortgage  
2 loan originator companies shall include the following:

3 (1) The mortgage loan originator company continues to meet  
4 the minimum standards for licensure established  
5 pursuant to section 454F-5;

6 (2) The mortgage loan originator company's qualified  
7 individual and every branch manager have satisfied the  
8 minimum standards for license renewal;

9 (3) The mortgage loan originator company has paid all  
10 required fees for renewal of the license; and

11 (4) The mortgage loan originator company is registered  
12 with the business registration division of the  
13 department of commerce and consumer affairs.

14 ~~[(c) The minimum standards for license renewal for a~~  
15 ~~mortgage servicer company shall include the following:~~

16 ~~(1) The mortgage servicer company continues to meet the~~  
17 ~~minimum standards for licensure established pursuant~~  
18 ~~to section 454F-5;~~

19 ~~(2) The mortgage servicer company has paid all required~~  
20 ~~fees for renewal of the license; and~~



1       ~~(3) The mortgage servicer company is registered with the~~  
2           ~~business registration division of the department of~~  
3           ~~commerce and consumer affairs.~~

4       ~~(d)]~~ (c) The license of a mortgage loan originator [7] or  
5 mortgage loan originator company [~~7~~, ~~or mortgage servicer company~~]  
6 that fails to satisfy the minimum standards for license renewal  
7 shall expire. The commissioner may adopt procedures for the  
8 reinstatement of expired licenses consistent with section  
9 454F-8.5 and the standards established by NMLS."

10       SECTION 12. Section 454F-9, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12       "(a) Each year, a licensed mortgage loan originator shall  
13 complete at least eight hours of education approved in  
14 accordance with subsection (b) that shall include:

- 15       (1) Three hours of federal law and regulations;
- 16       (2) One hour of [state] the State's law and rules;
- 17       (3) Two hours of ethics that shall include instruction on  
18 fraud, consumer protection, and fair lending issues;
- 19       and
- 20       (4) Two hours of training related to lending standards for  
21 the nontraditional mortgage product marketplace."



1 SECTION 13. Section 454F-10, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "\$454F-10 Authority to require license. In addition to  
4 any other duties imposed upon the commissioner, the commissioner  
5 shall require mortgage loan originators[~~7~~] and mortgage loan  
6 originator companies [~~7~~ and mortgage servicer companies] to be  
7 licensed and registered through NMLS. The commissioner is  
8 authorized to participate in NMLS. The commissioner may  
9 establish by rule pursuant to chapter 91, requirements for  
10 mortgage loan originators[~~7~~] and mortgage loan originator  
11 companies, [~~and mortgage servicer companies,~~] including:

- 12 (1) Background checks of:
  - 13 (A) Criminal history through fingerprint or other
  - 14 databases;
  - 15 (B) Civil or administrative records;
  - 16 (C) Credit history; and
  - 17 (D) Any other source deemed necessary by NMLS;
- 18 (2) Fees to apply for or renew licenses through NMLS;
- 19 (3) The setting or resetting as necessary of license
- 20 renewal and reporting dates;

1 (4) Requirements for amending or surrendering a license;  
2 and

3 (5) Any other activity the commissioner deems necessary to  
4 participate in NMLS."

5 SECTION 14. Section 454F-14, Hawaii Revised Statutes, is  
6 amended by amending subsection (f) to read as follows:

7 "(f) This section shall not apply to information or  
8 material relating to the employment history of, and publicly  
9 adjudicated disciplinary and enforcement actions against,  
10 mortgage loan originators [7] and mortgage loan originator  
11 companies [~~7~~ and mortgage servicer companies] that are included  
12 in NMLS for access by the public."

13 SECTION 15. Section 454F-17, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§454F-17 Prohibited practices.** It shall be a violation  
16 of this chapter for a licensee or person subject to this chapter  
17 to:

18 (1) Directly or indirectly employ any scheme, device, or  
19 artifice to defraud or mislead borrowers or lenders or  
20 to defraud any person;



- 1           (2) Engage in any unfair or deceptive practice related to  
2           mortgage loan origination activities toward any  
3           person;
- 4           (3) Obtain property by fraud or misrepresentation;
- 5           (4) Solicit or enter into any contract with a borrower or  
6           an applicant for a residential mortgage loan that  
7           provides in substance that the person or individual  
8           subject to this chapter may earn a fee or commission  
9           through "best efforts" to obtain a residential  
10          mortgage loan even though no loan is actually obtained  
11          for the borrower[+] or applicant for a residential  
12          mortgage loan;
- 13          (5) Solicit, advertise, or enter into a contract for  
14          specific interest rates, points, or other financing  
15          terms unless the terms are actually available at the  
16          time of soliciting, advertising, or contracting;
- 17          (6) Conduct any business covered by this chapter without  
18          holding a valid license as required under this  
19          chapter, or assist or aid and abet any person in the  
20          conduct of business under this chapter without a valid  
21          license as required under this chapter;





- 1 (7) Fail to make disclosures as required by this chapter  
2 and any other applicable state or federal law  
3 including rules or regulations adopted pursuant to  
4 state or federal law;
- 5 (8) Fail to comply with this chapter or any order or rule  
6 issued or adopted under the authority of this chapter,  
7 or fail to comply with any other state or federal law,  
8 including the rules and regulations adopted pursuant  
9 to state or federal law applicable to any business  
10 authorized or conducted pursuant to this chapter;
- 11 (9) Make, in any manner, any false or deceptive statement  
12 or representation, including with regard to the rates,  
13 points, or other financing terms or conditions for a  
14 residential mortgage loan, or engage in bait and  
15 switch advertising;
- 16 (10) Negligently or knowingly make any false statement or  
17 provide any misleading information 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 NMLS, including an  
21 application for a license under this chapter, or in



1 connection with any examination or investigation  
2 conducted by the commissioner or another government  
3 agency;

4 (11) Make any payment, threat, or promise, directly or  
5 indirectly, to any person for the purposes of  
6 influencing the independent judgment of the person in  
7 connection with a residential mortgage loan, or make  
8 any payment, threat, or promise, directly or  
9 indirectly, to any appraiser of a property for the  
10 purpose of influencing the independent judgment of the  
11 appraiser with respect to the value of a property;

12 (12) Cause or require a borrower to obtain property  
13 insurance coverage in an amount that exceeds the  
14 replacement cost of the improvements as established by  
15 the property insurer;

16 (13) Fail to truthfully account for moneys belonging to a  
17 party to a residential mortgage loan [~~transaction~~];

18 (14) Deliver a misleading or deceptive communication or  
19 advertisement, whether written, electronic, or oral,  
20 when marketing or soliciting a residential mortgage  
21 loan; provided that:



1 (A) 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  
6 to, or is the responsibility of the financial  
7 institution is a misleading or deceptive  
8 communication; and

9 (B) Advertising that a specific interest rate,  
10 points, or financial terms are available when the  
11 rates, points, or financial terms are not  
12 actually available is a misleading or deceptive  
13 communication;

14 (15) Fill in or complete any blank on a final residential  
15 mortgage loan application that requests material  
16 information including financial information without  
17 adequate supporting documentation provided by the  
18 borrower;

19 (16) Fill in or complete any blank on any mortgage or note  
20 evidencing or securing the residential mortgage loan



- 1 which relates to the amount, interest rate, term, or  
2 monthly payment of the residential mortgage loan;
- 3 (17) Originate a residential mortgage loan based primarily  
4 on the current market value of the borrower's  
5 collateral rather than on the borrower's ability to  
6 repay the loan according to its terms; provided that  
7 the sale of the property is made to a bona fide buyer;  
8 and provided further that this paragraph shall not  
9 apply to a reverse mortgage as defined under title 12  
10 [~~Code of Federal Regulations~~] C.F.R. section [226.33]  
11 1026.33;
- 12 (18) Advertise terms of a residential mortgage loan in  
13 violation of [~~section 226.16~~] title 12 C.F.R. section  
14 1026.16 or [~~226.24 of Regulation Z of the Board of~~  
15 ~~Governors of the Federal Reserve System~~] 1026.24; or
- 16 (19) Encourage a borrower to misrepresent, inflate, or  
17 fabricate the source or amount of a borrower's actual  
18 income or assets in the application or underwriting  
19 process for a residential mortgage loan."

20 SECTION 16. Section 454F-22, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§454F-22 Mortgage loan originator, mortgage loan  
2 originator company, exempt sponsoring mortgage loan originator  
3 company, and nonprofit [~~organizations, and mortgage servicer~~  
4 ~~company~~] organization fees. (a) Except as provided in  
5 subsection (b), a mortgage loan originator shall pay the  
6 following fees to obtain and maintain a valid mortgage loan  
7 originator license:

- 8           (1) Initial application fee of \$600;
- 9           (2) Annual license renewal fee of \$350;
- 10          (3) Reinstatement fee of \$100;
- 11          (4) Late fee of \$25 per day; and
- 12          (5) Criminal background check fee of \$35, or of an amount  
13             determined by the commissioner by rule pursuant to  
14             chapter 91.

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

- 18          (1) Initial application fee of \$35;
- 19          (2) Annual license renewal fee of \$35;
- 20          (3) Reinstatement fee of \$100;
- 21          (4) Late fee of \$25 per day; and



1 (5) Criminal background check fee of \$35, or of an amount  
2 determined by the commissioner by rule pursuant to  
3 chapter 91.

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

7 (1) Fees payable for a principal office of a mortgage loan  
8 originator company:

9 (A) Initial application fee of \$900;

10 (B) Processing fee of \$35 for each control person;

11 (C) Annual license renewal fee of \$600;

12 (D) Reinstatement fee of \$100;

13 (E) Late fee of \$25 per day; and

14 (F) Criminal background check fee of \$35, or of an

15 amount determined by the commissioner by rule

16 pursuant to chapter 91, for each control person,

17 executive officer, director, general partner, and

18 manager; and

19 (2) Fees payable for each branch office of a mortgage loan  
20 originator company:

21 (A) Initial application fee of \$250;



1 (B) Annual license renewal fee of \$100;

2 (C) Reinstatement fee of \$100; and

3 (D) Late fee of \$25 per day.

4 (d) An exempt sponsoring mortgage loan originator company  
5 shall pay the following fees to maintain a valid registration in  
6 NMLS:

7 (1) Initial registration fee of \$200;

8 (2) Annual registration renewal fee of \$150; and

9 (3) Late fee of \$25 per day.

10 (e) A nonprofit organization shall pay the following fees  
11 to maintain a valid registration as a nonprofit organization in  
12 NMLS:

13 (1) Initial registration fee of \$200;

14 (2) Annual registration renewal fee of \$150; and

15 (3) Late fee of \$25 per day.

16 ~~[(f) A mortgage servicer company shall pay for a principal~~  
17 ~~office the following fees to maintain a valid mortgage loan~~  
18 ~~servicer loan modification license:~~

19 ~~(1) Initial application fee of \$600;~~

20 ~~(2) Annual license renewal fee of \$600;~~

21 ~~(3) Reinstatement fee of \$100;~~



1       ~~(4) Late fee of \$25 per day; and~~  
2       ~~(5) Criminal background check fee of \$35, or of an amount~~  
3       ~~determined by the commissioner by rule pursuant to~~  
4       ~~chapter 91, for each control person, executive~~  
5       ~~officer, director, general partner, and managing~~  
6       ~~member.~~

7       ~~(g)]~~ (f) In addition to fees charged by NMLS, a licensee  
8 shall pay to the commissioner a fee of \$100 for each of the  
9 following amendments to information provided to NMLS that  
10 require the review of the commissioner:

- 11       (1) Change of physical location or mailing address for  
12       branch office or principal place of business;  
13       (2) Addition or deletion of a "d/b/a" assignment;  
14       (3) Change of mortgage loan originator's sponsor;  
15       (4) Change of qualified individual;  
16       (5) Change of branch manager; and  
17       (6) Change of mortgage loan originator company's legal  
18       name.

19 The commissioner, upon a showing of good cause, may waive any  
20 fee set forth in this subsection.





1       ~~[-(h)]~~ (g) The fees established by this section are  
2 nonrefundable and are in addition to any fees established and  
3 charged by NMLS, an approved educational course provider, an  
4 approved educational testing provider, a law enforcement agency  
5 for fingerprints and background checks, or a credit reporting  
6 agency used by NMLS.

7       ~~[-(i)]~~ (h) The commissioner may establish, by rule pursuant  
8 to chapter 91, any other fees or charges necessary for the  
9 administration of this chapter."

10       SECTION 17. Section 454F-24, Hawaii Revised Statutes, is  
11 amended to read as follows:

12       "~~§454F-24 [Mortgage servicer companies,]~~ Limited exemption  
13 for mortgage loan originators[-] employed by mortgage servicers.

14 An employee who performs mortgage loan originator activities for  
15 a mortgage servicer [~~company~~] is exempt from registration and  
16 licensure as a mortgage loan originator; provided that:

17       (1) The employee's actions are part of the employee's  
18 duties as an employee of the mortgage servicer  
19 [~~company~~]; and

20       (2) The [~~employee provides~~] employee's mortgage loan  
21 originator services [only with respect] are limited to



1 [a] residential [~~mortgage~~] loan [~~modification.~~]  
2 modifications and processing the approval of loan  
3 assumptions."

4 SECTION 18. Section 454F-41, Hawaii Revised Statutes, is  
5 amended by amending subsections (b) and (c) to read as follows:

6 "(b) In addition to application fees and any fees required  
7 by NMLS, a licensee shall pay to the division a mortgage loan  
8 recovery fund fee as follows for deposit in the mortgage loan  
9 recovery fund:

10 (1) The sum of \$300 for each principal office location of  
11 a mortgage loan originator company [~~or mortgage~~  
12 ~~servicer company~~];

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

15 (3) The sum of \$200 for each mortgage loan originator.

16 (c) Upon application for renewal of a license under this  
17 chapter, a licensee shall pay, in addition to the licensee's  
18 license renewal fee and fees required by NMLS, a mortgage loan  
19 recovery fund fee as follows for deposit in the mortgage loan  
20 recovery fund:



1 (1) The sum of \$200 for each principal office location of  
2 a mortgage loan originator company [~~er a mortgage~~  
3 ~~servicer company~~];

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

6 (3) The sum of \$100 for each mortgage loan originator.

7 Mortgage loan recovery fund fees collected pursuant to this  
8 subsection shall be refundable upon the denial of a license  
9 renewal by the commissioner."

10 SECTION 19. Section 454M-1, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By adding eight new definitions to be appropriately  
13 inserted and to read:

14 ""Affiliated entity" means a person or other entity that is  
15 controlled, controlled by, or under common control with a  
16 developer.

17 "Control" means the power to direct management or policies  
18 of a company, whether through ownership of securities, by  
19 contract, or otherwise.

20 "Developer" means a person whose time share plan is  
21 accepted by the director for registration under chapter 514E.



1        "Director" means the director of commerce and consumer  
2 affairs.

3        " Dwelling " means a residential structure or mobile home  
4 that contains one to four family housing units or individual  
5 units of condominiums or cooperatives.

6        " Residential real estate " means any real property located  
7 in this State, upon which a dwelling is constructed or intended  
8 to be constructed.

9        " Time share interest " means that interest purchased in a  
10 time share plan which grants the purchaser the right to use and  
11 occupy accommodations, facilities, or recreational sites,  
12 whether improved or unimproved, pursuant to a time share plan.

13        " Time share plan " has the same meaning as defined in title  
14 11 United States Code section 101(53D) ."

15        2. By amending the definitions of "borrower", "loan  
16 modification", "person", and "residential mortgage loan" to  
17 read:

18        " Borrower " means the obligor, maker, cosigner, or  
19 guarantor under a mortgage loan agreement. For purposes of this  
20 chapter, a borrower [~~may also be referred to as a~~] is included  
21 in the term consumer.



1           "~~Loan~~ Residential loan modification" or "loan  
2 modification" means a temporary or permanent change to the terms  
3 of a borrower's existing residential mortgage loan agreement,  
4 mutually agreed to between a borrower and a lender.

5           "Person" means an individual, sole proprietorship,  
6 partnership, corporation, limited liability company, limited  
7 liability partnership, or other association~~[, or other~~  
8 ~~organization.]~~ of individuals, however organized.

9           "Residential mortgage loan" or "mortgage loan" means [a  
10 ~~mortgage loan, home equity loan, or reverse mortgage]~~ any  
11 loan[,] primarily for personal, family, or household use that is  
12 secured by a [~~first or subordinate lien on residential real~~  
13 ~~property located in Hawaii, including a refinancing of any~~  
14 ~~secured loan on residential real property located in Hawaii,~~  
15 ~~upon which:~~

16           ~~(1) There is or will be constructed a structure or~~  
17           ~~structures designed principally for occupancy by one~~  
18           ~~to four families, including individual units of~~  
19           ~~condominiums and cooperatives; or~~

20           ~~(2) A manufactured home is located or will be placed on~~  
21           ~~the real property, using proceeds of the loan.]~~



1           mortgage, deed of trust, or other equivalent  
2           consensual security interest on a dwelling or  
3           residential real estate and includes refinancings,  
4           reverse mortgages, home equity lines of credit, and  
5           other first and additional lien loans that meet the  
6           qualifications listed in this definition."

7           SECTION 20. Section 454M-2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§454M-2 License required.** (a) No person except those  
10 exempted under this chapter shall engage in the business of  
11 mortgage servicing without a license as provided in this  
12 chapter.

13           (b) No person shall engage in the business of mortgage  
14 servicing in this State unless the person providing services has  
15 a physical presence in the State pursuant to section  
16 454M-5(b)(6).

17           ~~[(c) No person licensed as a mortgage servicer shall~~  
18 ~~provide mortgage loan modifications or any other services that~~  
19 ~~would require licensing pursuant to chapter 454F without first~~  
20 ~~complying with the licensure requirements under chapter 454F.] "~~



1 SECTION 21. Section 454M-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+] §454M-3 [+] Exemptions. This chapter shall not apply  
4 to the following:

- 5 (1) Any persons chartered or authorized under the laws of  
6 any state or federal law to engage in the activity of  
7 an insured depository institution as defined in title  
8 12 United States Code section 1813(c)(2), including  
9 banks or savings associations, and operating  
10 subsidiaries of an insured depository institution;
- 11 (2) Trust companies, credit unions, insurance companies,  
12 and financial service loan companies licensed by the  
13 State;
- 14 (3) The Federal Deposit Insurance Corporation, in  
15 connection with assets acquired, assigned, sold, or  
16 transferred pursuant to section 13(c) of the Federal  
17 Deposit Insurance Act or as receiver or conservator of  
18 an insured depository institution;
- 19 (4) The Federal National Mortgage Association; the Federal  
20 Home Loan Mortgage Corporation; the Federal Deposit  
21 Insurance Corporation; the United States Department of



1           Housing and Urban Development, and the Government  
2           National Mortgage Association and the Federal Housing  
3           Administration, and cases in which a mortgage insured  
4           under the National Housing Act, 12 United States Code  
5           section 1701 et seq., is assigned to the United States  
6           Department of Housing and Urban Development; the  
7           National Credit Union Administration; the Farmers Home  
8           Administration or its successor agency under Public  
9           Law 103-354; and the Department of Veterans Affairs,  
10          in any case in which the assignment, sale, or transfer  
11          of the servicing of the mortgage loan is preceded by  
12          termination of the contract for servicing the loan for  
13          cause, commencement of proceedings for bankruptcy of  
14          the servicer, or commencement of proceedings by the  
15          Federal Deposit Insurance Corporation for  
16          conservatorship or receivership of the servicer or an  
17          entity by which the servicer is owned or controlled;  
18          [and]

19          (5) Any person making or acquiring contemporaneously no  
20          more than five residential mortgage loans with that





- 1 person's own funds for that person's own
- 2 investment [-]; and
- 3 (6) A developer of a time share plan, or an affiliated
- 4 entity of a developer of a time share plan, servicing
- 5 a loan that is:
- 6 (A) Made by the developer or the developer's
- 7 affiliated entity; and
- 8 (B) Secured by a lien on a time share interest."

9 SECTION 22. Section 454M-4, Hawaii Revised Statutes, is  
10 amended as follows:

- 11 1. By amending subsection (a) to read:
- 12 "(a) The commissioner may approve a license or license
- 13 renewal application upon receipt of a complete application;
- 14 provided that an applicant for licensure shall file an
- 15 application on a form prescribed by NMLS or by the commissioner
- 16 and shall pay an application fee of \$675. Each license shall
- 17 expire on December 31 of each calendar year unless the license is
- 18 renewed. A licensee may apply for license renewal by filing a
- 19 renewal statement on a form prescribed by NMLS or by the
- 20 commissioner and paying a renewal fee of [~~\$425~~] \$600, at least



1 four weeks prior to December 31. The minimum standards for  
2 license renewal shall include the following:

- 3       (1) The licensee continues to meet the minimum standards  
4       for licensure established pursuant to this section;  
5       (2) The licensee has paid all required fees for renewal of  
6       the license; and  
7       (3) The licensee is registered with the business  
8       registration division of the department of commerce  
9       and consumer affairs.

10 All fees paid pursuant to this section, including fees paid in  
11 connection with an application, shall be nonrefundable. No fee  
12 paid pursuant to this section shall be prorated if the license  
13 is surrendered, revoked, or suspended prior to the expiration of  
14 the period for which it was approved."

15       2. By amending subsection (g) to read:

16       "(g) A mortgage servicer licensee may change the  
17 licensee's name or the address of any of the licensee's offices  
18 specified on the most recent filing with NMLS if:

- 19       (1) The licensee files the change with NMLS and [~~in the~~  
20       ~~case of the principal office or a branch office,~~]  
21       provides directly to the commissioner a bond rider or



1 endorsement, or addendum, as applicable, to any bond on  
2 file with the commissioner that reflects the new name  
3 or address [~~of the principal office or branch office,~~  
4 ~~and~~];

5 (2) The commissioner approves the change in writing[-]; and

6 (3) The mortgage servicer pays to the commissioner a fee  
7 of \$100 and any fees charged by NMLS."

8 3. By amending subsection (j) to read:

9 "(j) Before a mortgage servicer's license becomes  
10 effective, the applicant or licensee shall file with the  
11 commissioner a surety bond written by a surety authorized to  
12 write surety bonds in this State, covering the applicant or  
13 [~~licensee's principal office and any branch office from which the~~  
14 ~~applicant or licensee acts as a mortgage servicer,~~] licensee in a  
15 penal sum of \$100,000. No mortgage servicer licensee shall act  
16 as a mortgage servicer in this State without maintaining the  
17 surety bond required by this section.

18 The surety bond shall be:

19 (1) In a form approved by the attorney general of this  
20 State; and



1           (2) Conditioned upon the mortgage servicer licensee  
 2           faithfully performing any and all written agreements or  
 3           commitments with or for the benefit of borrowers and  
 4           mortgagees, truly and faithfully accounting for all  
 5           funds received from a borrower or mortgagee in the  
 6           person's capacity as a mortgage servicer, and  
 7           conducting the mortgage business consistent with the  
 8           provisions of this chapter to perform any written  
 9           agreements or commitments."

10           SECTION 23. Section 454M-5, Hawaii Revised Statutes, is  
 11 amended as follows:

12           1. By amending subsection (j) to read:

13           "(j) Each mortgage servicer licensee shall maintain  
 14 adequate records of each residential mortgage loan transaction  
 15 at the office named in the mortgage servicer license[-] for  
 16 seven years."

17           2. By amending subsection (m) to read:

18           "(m) Where this chapter requires [~~compliance with~~] a  
 19 person to comply with procedures, actions, standards,  
 20 disclosures, notices, format, content, or other requirements of  
 21 the Real Estate Settlement Procedures Act, the required



1 compliance applies to any person subject to this chapter,  
2 whether or not the Real Estate Settlement Procedures Act applies  
3 to that person or transaction."

4 SECTION 24. Section 454M-6, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) It shall be a violation of this chapter for any  
7 mortgage servicer in the course of any mortgage loan transaction  
8 to fail to comply with any:

9 (1) Applicable federal law or regulation related to  
10 mortgage servicing, including but not limited to:

11 (A) The Real Estate Settlement Procedures Act,  
12 including the mortgage loan servicing transfer,  
13 escrow account administration, and borrower  
14 request for information and error resolution  
15 requirements;

16 (B) The Truth in Lending Act, title 15 United States  
17 Code sections 1601 through 1667f, as amended, and  
18 Regulation Z adopted thereunder, title 12 C.F.R.  
19 part [226-] 1026, as amended; or

20 (C) Rules and regulations issued or administered by  
21 the Consumer Financial Protection Bureau, and



- 1           interpretations of the rules by the Consumer  
2           Financial Protection Bureau through interpretive  
3           rules, bulletins, statements of policy, and  
4           statements of guidance;
- 5       (2) Agreement with a governmental entity, agency, agent,  
6       or regulator, or state attorney general that applies  
7       to the mortgage servicer, including:
- 8           (A) A servicer participation agreement or other  
9           agreement to participate in the Home Affordable  
10          Modification Program or other Making Home  
11          Affordable program;
- 12          (B) Home Affordable Modification Program rules,  
13          including guidance provided by Making Home  
14          Affordable program handbooks, and supplemental  
15          directives; or
- 16          (C) The National Mortgage Settlement reached in 2012  
17          by the federal government and forty-nine states,  
18          with the five largest mortgage servicers in the  
19          United States, to address mortgage servicing,  
20          foreclosure, and bankruptcy abuses;



1 (3) Order of a court or government regulator that applies  
2 to the mortgage servicer;

3 (4) Provision of this chapter or any rule adopted pursuant  
4 to this chapter; or

5 (5) Federal or state law, rule, or regulation."

6 SECTION 25. Section 454M-8.5, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8 "(c) Each licensee or person subject to this chapter shall  
9 provide to the commissioner upon request the books and records  
10 relating to the operations of the licensee or person subject to  
11 this chapter. The commissioner shall have access to the books  
12 and records and shall be permitted to interview the officers,  
13 principals, mortgage [~~loan originators,~~] servicers employees,  
14 independent contractors, agents, and customers of the [~~licensed~~  
15 ~~mortgage loan originator~~] licensee or person subject to this  
16 chapter concerning their business."

17 SECTION 26. Section 454M-10, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "\$454M-10 Penalty. Any person who violates any provision  
20 of this chapter may be subject to an administrative fine of not  
21 more than \$7,000 for each violation; provided that if the



1 aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate  
2 fine amount shall be deposited into the mortgage foreclosure  
3 dispute resolution special fund established pursuant to section  
4 667-86."

5 SECTION 27. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 28. This Act shall take effect on July 1, 2016.





**Report Title:**

Division of Financial Institutions; Mortgage Loan Originators;  
Mortgage Servicers; Secure and Fair Enforcement for Mortgage  
Licensing Act

**Description:**

Amends laws pertaining to mortgage loan originators and mortgage  
loan servicers by clarifying the applicable scope of each  
chapter, making terminology more consistent across both  
chapters, and updating references to and provisions implementing  
controlling federal law. (CD1)

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

