

Honolulu, Hawaii

APR 04 2008

RE: H.B. No. 2408  
H.D. 1  
S.D. 2

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Madam:

Your Committees on Judiciary and Labor and Ways and Means, to which was referred H.B. No. 2408, H.D. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE BROKERS,"

beg leave to report as follows:

The purpose of this measure is enact new provisions to regulate mortgage brokers and loan originators, and to repeal existing law regulating mortgage brokers and solicitors.

Your Committees received testimony in support of this measure from the Commissioner of Financial Institutions, Hawaii Association of Mortgage Brokers, Hawaii Bankers Association, Hawaii Financial Services Association, Legal Aid Society of Hawaii, Mortgage Bankers Association of Hawaii, Primerica Financial Services Home Mortgages, Inc., State Farm Insurance Companies, and fifteen individuals.

This measure transfers the responsibility for regulation of the mortgage broker industry from the Professional and Vocational Licensing Division, in conjunction with the Regulated Industry Complaints Office, to the Division of Financial Institutions, and expands and strengthen the regulation of the industry. This measure also provides more specialized regulation of mortgage brokers and loan originators by the Division of Financial Institutions.



Presently, mortgage lenders who are banks, savings associations, financial services loan companies, and credit unions are exempt from the requirements of chapter 454, Hawaii Revised Statutes, relating to mortgage brokers and solicitors. This measure also brings out-of-state mortgage lenders who are not subject to federal banking examination under the licensing and regulatory oversight of the Division of Financial Institutions.

The regulatory reorganization under this measure provides a more thorough, unified, effective, and seamless supervision of the residential mortgage industry's activities in Hawaii. This measure also improves licensed residential mortgage broker and loan originator skill and experience levels, so as to better ensure that licensees do not engage in unfair, deceptive, or fraudulent practices, particularly with regard to predatory lending practices.

Your Committees note the following concerns regarding this measure, expressed in the testimony:

- (1) Whether affiliates of banks, who are not now subject to a federal banking examination and would be required under pending federal legislation to be licensed by the State to sell mortgage loans, should nonetheless be exempted; and
- (2) Whether a promissory note and mortgage evidencing a residential mortgage loan should be declared void and unenforceable because a non-licensed mortgage broker or loan originator was involved.

Your Committees note that the exemption for an individual who is an exclusive agent of a bank or savings association is consistent with federal court cases such as *State Farm Bank, F.S.B. v. Burke*, 445 F.supp.2d 207 (D.Conn.2006), based upon the rulings of the Office of Thrift Supervision which preempts state regulation of federal savings associations conducted through agents of the federal savings association.

Your Committees request the Conference Committee on this measure to consider whether the exemptions provided in this measure and the exemptions proposed by Primerica Financial Services Home Mortgages, Inc., should correspond with pending federal legislation to regulate mortgage brokers.

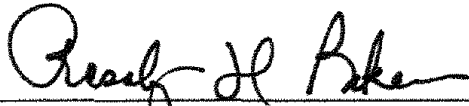


Your Committees have amended this measure by:

- (1) Changing the effective date to July 1, 2025, to continue the discussions in this matter; and
- (2) Making technical, nonsubstantive amendments.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2408, H.D. 1, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as H.B. No. 2408, H.D. 1, S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committees on Judiciary and  
Labor and Ways and Means,



ROSALYN H. BAKER, Chair




BRIAN T. TANIGUCHI, Chair



The Senate  
 Twenty-Fourth Legislature  
 State of Hawaii

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2408 HDI SDI	CRJ, JDL/WAM	4-2-08		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, BRIAN T. (C)	✓			
HEE, Clayton (VC)				✓
GABBARD, Mike	✓			
KOKUBUN, Russell S.	✓			
NISHIHARA, Clarence K.				✓
SLOM, Sam	✓			
<b>TOTAL</b>	4	-	-	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

\*Only one measure per Record of Votes

