

Honolulu, Hawaii

FEB 15 2008

RE: S.B. No. 3010

S.D. 1

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

Madam:

Your Committee on Commerce, Consumer Protection, and
Affordable Housing, to which was referred S.B. No. 3010 entitled:

"A BILL FOR AN ACT RELATING TO RESIDENTIAL MORTGAGE
PRACTICES,"

begs leave to report as follows:

The purpose of this measure is to streamline the regulation
and licensing of the mortgage broker industry by centralizing the
regulation of residential mortgage brokers, mortgage lenders, and
loan originators licensed to do business in Hawaii entirely under
the Division of Financial Institutions of the Department of
Commerce and Consumer Affairs.

Specifically, this measure provides the following:

- (1) Clarifies exemptions and prohibited activities;
- (2) Authorizes the Commissioner of Financial Institutions to
establish application requirements;
- (3) Authorizes the participation in a uniform multistate
automated licensing system to expedite licensing
procedures and information sharing;
- (4) Allows the Commissioner of Financial Institutions to
adopt rules for the continuing education of licensees,
including content criteria for courses, accreditation of



continuing education providers and programs, and the computation of continuing education credits;

- (5) Authorizes the Division of Financial Institutions to examine licensees and provides for the confidentiality of all examination related information;
- (6) Mandates compliance with applicable federal and state laws related to mortgage brokering, lending, and loan origination;
- (7) Authorizes the Commissioner of Financial Institutions to investigate or enjoin any individual for violations, and to set fees, commissions, and charges for licenses;
- (8) Establishes a fine of not more than \$5,000 per violation;
- (9) Repeals chapter 454, Hawaii Revised Statutes, relating to the licensing and regulation of mortgage brokers and solicitors; and
- (10) Appropriates \$140,000 out of the Compliance Resolution Fund.

Testimony in support of this measure was submitted by the Department of Commerce and Consumer Affairs; First Hawaiian Bank; Primerica Financial Services Home Mortgages, Inc.; the Hawaii Financial Services Association; and State Farm Insurance Companies. Testimony in opposition to this measure was submitted by Lauhala Mortgage; the Hawaii Association of Mortgage Brokers; the Mortgage Bankers Association of Hawaii; Best Mortgage, Inc.; and two private individuals.

The residential real estate boom of the past several years, which has only recently come to an abrupt end, spawned a significant number of national complaints against mortgage brokers. These complaints continue as borrowers find that what they had understood to be a "good" loan was in fact not as good as expected. Increased loan rates, prepayment penalties, esoteric repayment schedules and fraud have all contributed to create what the U.S. Federal Bureau of Investigation has termed, "the fastest growing white collar crime in the country." While the volume of complaints in Hawaii has not been as overwhelming as that seen on



the mainland, complaints here are tracking on a continuous and disturbing upward trend, which shows little sign of declining.

The responsibility for the licensing of mortgage brokers and loan originators (or mortgage solicitors) currently rests with the Professional and Vocational Licensing (PVL) Division of the Department of Commerce and Consumer Affairs pursuant to chapter 454, Hawaii Revised Statutes. PVL's oversight of mortgage brokers and solicitors is essentially limited to the registration of licensed brokers and solicitors. Your Committee finds that mere registration is no longer adequate in light of the problems within the lending industry and a unified, effective, and seamless supervision of the residential mortgage industry's activities in the State is needed to protect Hawaii consumers and homeowners. Consumer interests will be better protected by charging a single division (Division of Financial Institutions of the Department of Commerce and Consumer Affairs) with the overall supervision of the licensing, examination, and regulation of mortgage brokers and loan originators.

Your Committee notes the concerns and various suggested amendments raised to improve this measure, and recognizes that although these suggestions and concerns are all focused on a common goal of effectively and efficiently regulating the residential mortgage industry, each proposes different methods to achieving this common goal. Your Committee encourages further discussion on this matter by the Committee on Ways and Means.

Accordingly, your Committee has amended this measure by deleting its contents and inserting language that:

- (1) Adds a new chapter to title 22, Hawaii Revised Statutes, that:
 - (A) Clarifies exemptions and prohibited activities;
 - (B) Authorizes the Commissioner of Financial Institutions to establish application requirements;
 - (C) Authorizes the participation in a uniform multistate automated licensing system to expedite licensing procedures and information sharing;
 - (D) Authorizes the Division of Financial Institutions to examine licensees and provides for the



confidentiality of all examination related information;

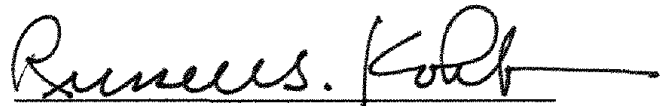
- (E) Authorizes the Commissioner of Financial Institutions to investigate or enjoin any individual for violations, and to set fees, commissions, and charges for licenses;
 - (F) Establishes a fine of not more than \$2,000 for violation, or imprisonment of not more than one year, or both, or fine not more than \$10,000 for a violation that includes conduct that is directed towards or committed against an elder;
 - (G) Regulates advertising of mortgage broker or loan originator services; and
 - (H) Regulates the requirements for written agreements for any transaction between a mortgage broker or a loan originator and a borrower;
- (2) Amends section 846-2.7, Hawaii Revised Statutes, to add that criminal history checks may be conducted by the Department of Commerce and Consumer Affairs on an applicant who is applying for a mortgage broker or mortgage lender license or loan originator license;
 - (3) Repeals chapter 454, Hawaii Revised Statutes, relating to the licensing and regulation of mortgage brokers and solicitors;
 - (4) Appropriates \$140,000 out of the Compliance Resolution Fund;
 - (5) Inserts an effective date of July 1, 2050 to encourage further discussion on this matter by the Committee on Ways and Means; and
 - (6) Makes technical, nonsubstantive amendments for the purposes of clarity and style.

Your Committee believes that this measure, as amended, fulfills the intent of this measure, which is to streamline the regulation and licensing of the mortgage broker industry.



As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3010, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3010, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,



RUSSELL S. KOKUBUN, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Commerce, Consumer Protection and Affordable Housing
CPH

Bill / Resolution No.:* SB 3010	Committee Referral: CPH, WAM	Date: 2-12-08		
<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
KOKUBUN, Russell S. (C)	✓			
IGE, David Y. (VC)				✓
ESPERO, Will				✓
IHARA, Jr., Les	✓			
SAKAMOTO, Norman	✓			
TANIGUCHI, BRIAN T.				✓
TRIMBLE, Gordon		✓		
TOTAL	3	1	0	3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes