

STAND. COM. REP. NO. 1267

Honolulu, Hawaii

March 27, 2009

RE: S.B. No. 1218
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and
Judiciary, to which was referred S.B. No. 1218, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE LOAN ORIGINATORS,"

beg leave to report as follows:

The purpose of this bill is to protect homebuyers by
replacing the Mortgage Brokers and Solicitors Law under Chapter
454, Hawaii Revised Statutes (HRS), with a new law regulating
mortgage loan originators.

The Hawaii Bankers Association testified in support of this
bill. The Department of Commerce and Consumer Affairs and the
Hawaii Financial Services Association opposed this measure. The
Legal Aid Society of Hawaii provided comments.

While this bill is the latest attempt in the last several
years to reform mortgage broker regulation, there are additional
considerations this time around. The federal Secure and Fair
Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was
passed in July 2008, establishing a uniform licensing and
registration system for all mortgage loan originators, including
mortgage brokers and loan officers. If a state does not implement
laws consistent with the SAFE Act by federally established
deadlines, the federal Department of Housing and Urban Development
will provide the regulatory system. In light of these
circumstances and the prospect of ceding regulatory authority over

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mortgage brokers to federal control, your Committees continue to carefully consider the merits of this bill.

Your Committees also note that there are concerns regarding the repeal of the current mortgage broker law by this measure, because the new regulatory provisions in this bill, based on the requirements of the SAFE Act, apply only to individuals dealing with residential mortgage loans. It therefore appears that the SAFE Act does not preempt state laws regulating mortgage broker entities, such as corporations or partnerships, that employ mortgage loan originators, and that the repeal of the existing mortgage broker law will negatively impact consumer protections by eliminating the regulatory scheme for these mortgage broker entities.

Accordingly, your Committees have amended this bill by:

- (1) Eliminating the provision that repeals Chapter 454, HRS, Mortgage Brokers and Solicitors, and instead exempting mortgage loan originators from that chapter;
- (2) Renaming the new chapter established by this bill, as the "Secure and Fair Enforcement for Mortgage Licensing Act;"
- (3) Removing the provisions:
 - (A) Establishing certain requirements for written agreements between mortgage loan originators and borrowers, including commitment letters and mortgage brokerage agreements;
 - (B) Prohibiting mortgage loan originators from:
 - (i) Soliciting or arranging a residential mortgage loan at the borrower's dwelling without a prearranged appointment initiated by and at the invitation of the borrower;
 - (ii) Completing, without the borrower's consent, any portion of a residential mortgage loan application that requests material information; and
 - (iii) Completing, without the borrower's consent, any portion of an instrument evidencing or



securing a residential mortgage loan, which portion relates to the amount, interest rate, or monthly payment of the loan;

and

- (C) Establishing enhanced monetary penalties for violations of the new mortgage loan originator law involving conduct directed at elders;
- (4) Providing that it is a prohibited act for a mortgage loan originator to cause or require a borrower to obtain property insurance coverage in an amount exceeding the replacement cost of the improvements as established by the property insurer, rather than the property owner;
- (5) Providing the following fees for mortgage loan originators:
 - (A) \$250 for the license application fee;
 - (B) \$175 for the initial license fee;
 - (C) \$325 for the annual license renewal fee; and
 - (D) \$100 for a mortgage broker surcharge to establish regulatory practices for residential mortgage lending;

and

- (6) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1218, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1218, S.D. 2, H.D. 1, and be referred to the Committee on Finance.



Respectfully submitted on
behalf of the members of the
Committees on Consumer
Protection & Commerce and
Judiciary,



JON RIKI KARAMATSU, Chair



ROBERT N. HERKES, Chair



