

STAND. COM. REP. NO.

2214

Honolulu, Hawaii

FEB 12 2010

RE: S.B. No. 2603  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 2603 entitled:

"A BILL FOR AN ACT RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT,"

begs leave to report as follows:

The purpose of this measure is to bring Hawaii into full compliance with the requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Lending Act) by amending the State's implementing statutes and providing the Division of Financial Institutions with the necessary resources and authority to implement the regulatory structure required under federal law.

Your Committee received testimony in support of this measure from the Hawaii Association of Mortgage Brokers and Hawaii Financial Services Association. Testimony in opposition to this measure was received from the Hawaii Bankers' Association and the Hawaii Credit Union League. Comments on this measure were received from the Division of Financial Institutions of the Department of Commerce and Consumer Affairs. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that the federal S.A.F.E. Mortgage Lending Act, Public Law 110-289, requires that all states enact legislation that complies with the federal law before January 1, 2011. Your Committee finds that failure to enact sufficient

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legislation will result in the usurpation by the federal Department of Housing and Urban Development of the State's authority to regulate its domestic residential real estate mortgage industry. Your Committee finds that it is unacceptable for the State to cede regulatory authority over a domestic industry to the federal government, especially since this industry involves purely intra-state matters and local regulation is necessary to account for Hawaii's unique real estate market. Your Committee finds that failure of the State to properly license mortgage professionals by January 1, 2011 would bring the State's mortgage lending industry to a halt since individuals and companies not licensed in compliance with the S.A.F.E. Mortgage Lending Act would be unable to provide mortgage loan services without violating federal law. Your Committee notes that the Legislature began the process of complying with the S.A.F.E. Mortgage Lending Act with the passage of Act 32, Session Laws of Hawaii, 2009, (Act 32) which created chapter 454F, Hawaii Revised Statutes.

Your Committee notes that this measure leaves the regulatory structure established by Act 32 largely in place, making amendments only for the purpose of ensuring compliance with federal law. Your Committee finds that the bulk of the substantive provisions contained in this measure constitute provisions for the administration of the system created by Act 32. Your Committee finds that these regulatory guidelines, which normally would be accounted for in administrative rules, are here included in statute in order to ensure that the State does not inadvertently fall out of compliance with federal regulations due to a lengthy rule-making process that would imperil the State's ability to timely implement the necessary regulatory program.

Your Committee finds that the mortgage recovery fund created by this measure is intended to make it easier for a person aggrieved by the fraud, misrepresentation, or deceit of a mortgage licensee to obtain some economic relief. Your Committee notes that these provisions are intended to model the Real Estate Recovery Fund, since that fund has proven to be exceptionally efficient and user-friendly for regulators, licensees, and persons seeking compensation for losses caused by licensees.

Your Committee finds that the staff hiring authorized by this measure is adequate to meet the Division of Financial Institution's need to timely complete the processing of applications for licensure. Your Committee is sympathetic to the



Division's need for employees who are able to process confidential information contained in applications in an appropriate manner. Your Committee finds that the staffing pattern authorized by this measure is adequate to meet that need, particularly through the use of existing state employees who are accustomed to information practice and confidentiality standards.

Your Committee finds that the inclusion of amendments to the appropriation contained in Act 32 is necessary because of the Governor's refusal to release the funds necessary for the Division of Financial Institutions to hire staff to implement Act 32. It is the intention of your Committee that the Division of Financial Institutions be able to hire staff effective immediately upon the effective date of this measure in order that Hawaii's mortgage professionals may be licensed by the federal deadline. Failure to timely license the State's mortgage professionals will result in an unacceptable interference in the commerce of the State, since individuals and businesses without proper licensing will be unable to process applications and issue mortgages without running afoul of federal law. Your Committee finds that it would be catastrophic to Hawaii's economic situation to shut down an entire financial industry, particularly one that is as important to the state as the residential mortgage industry.

Your Committee has amended this measure by:

- (1) Clarifying the provisions relating to nondepository financial services loan companies;
- (2) Clarifying that licensees, and certain persons exempt from licensing, shall register and maintain a unique identifier with the Nationwide Mortgage Licensing System;
- (3) Renaming the mortgage recovery fund established in the measure the mortgage loan recovery fund and further providing for its administration in order to facilitate recovery for injury due to the fraud, misrepresentation, or deceit of a licensee;
- (4) Adding a requirement for prior authorization to establish a branch office or to relocate an office and for notice to close a branch office;



- (5) Specifying that fees, fines and charges collected pursuant to chapter 454F, Hawaii Revised Statutes, except fees payable to the mortgage loan recovery fund, shall be payable through the Nationwide Mortgage Loan Service, where accepted and that all other fees, fines, and charges shall be payable to the Division of Financial Institutions;
- (6) Deleting a provision to statutorily create new permanent positions in the Division of Financial Institutions;
- (7) Changing the amount of fees payable by licensees in order to reflect the cost of maintaining the required regulatory system;
- (8) Adding a new section to establish procedures for voluntary cessation of operations and surrender of a license;
- (9) Adding a new section to establish procedures and fees for change in control of a licensee;
- (10) Adding a new section to permit the Division of Financial Institutions to hire an attorney for any action involving the mortgage loan recovery fund;
- (11) Adding new definitions to chapter 454F, Hawaii Revised Statutes, and amending existing definitions;
- (12) Clarifying that exempt registered mortgage loan originator companies, insured depository institutions, and loan processors or underwriters who do not advertise or engage in the performance of the functions of a mortgage loan originator are exempt from licensure and regulation under chapter 454F, Hawaii Revised Statutes;
- (13) Reinstating the requirement that an applicant for licensure furnish information concerning the applicant's identity to the Commissioner of Financial Institutions and the Nationwide Mortgage Licensing System and extending this requirement to the control persons, executive officers, directors, general partners, and managing members of applicants other than individuals;



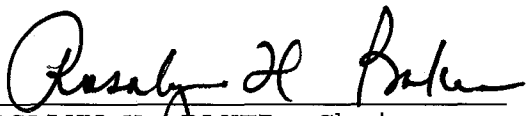
- (14) Requiring an applicant other than an individual to be licensed to do business in the State to qualify for licensure;
- (15) Requiring applicants and control persons, executive officers, directors, general partners, and managers of applicants other than individuals to consent to background checks in each state where the person has conducted mortgage loan activities;
- (16) Clarifying that a license shall expire due to failure to meet continuing education requirements;
- (17) Adding a provision to allow for additional civil penalties for violations that are directed toward, target, or injure an elder;
- (18) Authorizing the Commissioner of Financial Institutions to assess costs for certain expenses related to investigations or examinations to the subject of an investigation or examination and creating a reporting procedure for suspected violations;
- (19) Clarifying that it is a prohibited practice to provide a false or misleading statement on an application for licensure;
- (20) Authorizing the Commissioner of Financial Institutions to hire and employ certain permanent and temporary staff to implement the licensing and regulatory system created by chapter 454F, Hawaii Revised Statutes;
- (21) Deleting the portion of Act 32 that allowed for an individual to be credited for fess paid for a license under chapter 454, Hawaii Revised Statutes, to be credited to licensing fees under chapter 454F, Hawaii Revised Statutes;
- (22) Amending Act 32 to specify the positions for which the appropriation is authorized;
- (23) Removing language that allowed for provisional licenses to account for delays in processing applications for licensure under chapter 454F, Hawaii Revised Statutes;



- (24) Deleting a section that authorized the Commissioner of Financial Institutions to hire temporary employees;
- (25) Specifying the amount appropriated from the compliance resolution fund and specifying the permanent and temporary positions authorized to be paid from that appropriation;
- (26) Authorizing the Director of Commerce and Consumer Affairs to execute agreements with the Directors of Human Resource Development and Taxation to temporarily share employees for the purpose of processing the large number of initial applications for licensure under chapter 454F, Hawaii Revised Statutes;
- (27) Changing the effective date for the purpose of efficiently implementing the provisions of this measure;
- (28) Updating statutory cross references to chapter 454F, Hawaii Revised Statutes, and to federal law; and
- (29) Making nonsubstantive technical changes for the purposes of clarity and accuracy.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2603, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2603, 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 and  
Consumer Protection,

  
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ROSALYN H. BAKER, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:* <i>SB 2603</i>	Committee Referral: <i>CPN, WAM</i>	Date: <i>2/10/2010</i>		
<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
BAKER, Rosalyn H. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
GREEN, M.D., Josh	✓			
IHARA, Jr., Les	✓			
SAKAMOTO, Norman				✓
HEMMINGS, Fred	✓			
<b>TOTAL</b>	<i>6</i>			<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>David Y Ige</i></div>				
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\*Only one measure per Record of Votes