

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND JUDICIARY
ON
HOUSE BILL NO. 2375

February 1, 2012

RELATING TO THE MORTGAGE RESCUE FRAUD PREVENTION ACT

House Bill No. 2375 establishes a Mortgage Rescue Fraud Prevention Special Fund into which shall be deposited the fines from individuals found guilty of mortgage fraud which will be used for public educational activities relating to the mortgage rescue fraud prevention program.

While the Department of Budget and Finance does not take any position on the policy on the mortgage rescue fraud prevention program, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of Section 37-52.3, Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 2375, it is difficult to determine whether the special fund will be self-sustaining. In addition, the bill does not make an appropriation to allow the Department of Commerce and Consumer Affairs to expend the funds to support the mortgage rescue fraud prevention program.



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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

AND

THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Wednesday, February 1, 2012
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2375, RELATING TO THE MORTGAGE RESCUE
FRAUD PREVENTION ACT.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THEIR COMMITTEES:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of
Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on
H.B. No. 2375, Relating to the Mortgage Rescue Fraud Prevention Act. My name is
Bruce B. Kim and I am the Executive Director of OCP. OCP supports H.B. No. 2375.

House Bill No. 2375 establishes criminal penalties and a mandatory fine for

certain violations of HRS Chap. 480E Mortgage Rescue Fraud Prevention Act ("Act"). The purpose of the Act is to protect Hawaii consumers from persons who prey on homeowners who face property foreclosures, liens, or encumbrances. These so-called mortgage rescuers victimize innocent homeowners by taking their money and/or property which they can ill afford to lose. They carry out their schemes while the homeowners are at their most vulnerable and in desperate financial circumstances.

The sad fact is that many of the services promised by these unscrupulous mortgage rescuers are already available for free by HUD-approved housing counselors here in Hawaii.

While the Act currently provides for civil enforcement of any violation of its provisions as an unfair or deceptive trade practice within the meaning of HRS §480-2, OCP believes the addition of the proposed criminal penalties and mandatory fine would enhance the level of protection given to this particularly vulnerable category of consumers. Additionally, these changes are consistent with similar legislation criminalizing mortgage rescue fraud adopted in a growing number of states, such as California, Colorado, Illinois, Indiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Hampshire, and Rhode Island. Finally, the proposed criminal penalties and mandatory fine would help ensure that these so-called mortgage rescuers recognize the severity of their actions and are held accountable for the same.

Thank you for the opportunity to testify on H.B. No. 2375. I will be happy to answer any questions that the members of the Committee may have.

Testimony for HB2375 on 2/1/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, January 31, 2012 9:16 AM

To: CPCtestimony

Cc: jade@steadfastpt.com

Testimony for CPC/JUD 2/1/2012 2:00:00 PM HB2375

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Jadine L. Brown

Organization: Individual

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Submitted on: 1/31/2012

Comments:

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February 1, 2012

Rep. Robert Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Gilbert Keith-Agaran, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2375 (Mortgage Rescue Fraud Prevention Act)**
Hearing Date/Time: Wednesday, February 1, 2012, 2:00 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA supports the intent of this Bill.

The purpose of this Bill is to: (a) establish criminal penalties and a mandatory fine for certain violations of the Mortgage Rescue Fraud Prevention Act; and (b) establish a special fund to enforce the Mortgage Rescue Fraud Prevention Act and for related public educational activities.

HRS Chapter 480E is the Mortgage Rescue Fraud Prevention Act which was Act 137 of the 2008 legislature.

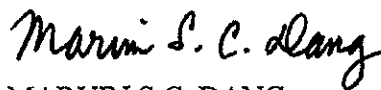
When the legislation which became Act 137 was before the 2008 legislature as H.B. 2326, we testified: "The HFSA believes that this Bill is needed to protect consumers who may be delinquent on their mortgage loans from scammers purporting to be mortgage foreclosure rescuers."

Unfortunately, we understand that these scammers still exist today. They pretend to help consumers who are delinquent on mortgage loans. In reality these perpetrators are nothing but predators who are violating Chapter 480E by committing some of the prohibited actions detailed in HRS Sec. 480E-10.

HRS Sec. 480E-11 provides that the civil penalty for violating the Act is an unfair or deceptive act of practice under HRS Sec. 480-2.

But it seems that a civil penalty is not enough. That's why this Bill also makes a violation of HRS Sec. 480E-10 a crime, i.e. a class C felony which has imprisonment and fines. Hopefully these criminal penalties will deter these scammers from victimizing homeowners.

Thank you for considering our testimony.



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Testimony to the House Committee on Consumer Protection and Commerce
February 1, 2012 at 2:00 p.m.

Testimony in support of HB 2375, Relating to Mortgage Rescue Fraud Protection Act

To: The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice-Chair
Members of the Committee on Consumer Protection and Commerce

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 82 Hawaii credit unions, representing approximately 811,000 credit union members across the state.

We are in support of HB 2375, Relating to Mortgage Rescue Fraud Prevention Act. We have had several credit unions report instances where their members have been victims of these types of fraudulent schemes. We appreciate the efforts of the legislature regarding this important issue.

Thank you for the opportunity to testify.

To: Rep. Robert Herkes, Chair, Consumer Protection and Commerce Committee
Rep. Gilbert Keith-Agaran, Chair, Judiciary Committee
From: Bob Nakata, Board Member, FACE
Re: HB2375

Chairs Herkes and Keith-Agaran, and Committee Members,

Thank you for this opportunity to testify on HB2375 Relating to the Mortgage Rescue Fraud Prevention Act. We support this Bill in concept. We of many situations of fraudulent and questionable behavior on the part of mortgage lenders but have not yet had the opportunity to study the Bill in detail. We will provide further testimony as the Bill moves forward.