

# HB2375

Measure Title: RELATING TO THE MORTGAGE RESCUE FRAUD PREVENTION ACT.

Report Title: Property Foreclosures, Liens, and Encumbrances; Mortgage Rescue Fraud; Distressed Property

Description: Establishes criminal penalties and a mandatory fine for certain violations of the mortgage rescue fraud prevention act. Establishes a special fund to enforce the mortgage rescue fraud prevention act and for related public educational activities.

Companion:

Package: None

Current Referral: CPN/JDL, WAM

Introducer(s): YAMANE

<b>Sort by Date</b>		<b>Status Text</b>
1/23/2012	H	Pending introduction.
1/25/2012	H	Introduced and Pass First Reading.
1/25/2012	H	Referred to CPC/JUD, FIN, referral sheet 7
1/30/2012	H	Bill scheduled to be heard by CPC/JUD on Wednesday, 02-01-12 2:00PM in House conference room 325.
2/1/2012	H	The committees on CPC recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 10 Ayes: Representative(s) Herkes, Yamane, Cabanilla, Keith-Agaran, Luke, McKelvey, Tsuji, Ching, Marumoto, Thielen; Ayes with reservations: none; Noes: none; and 5 Excused: Representative(s) Brower, Carroll, Coffman, Ito, Souki.
2/1/2012	H	The committees on JUD recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 9 Ayes: Representative(s) Keith-Agaran, Rhoads, Cabanilla, Herkes, Luke, McKelvey, Tsuji, Marumoto, Thielen; Ayes with reservations: none; Noes: none; and 6 Excused: Representative(s) Brower, Carroll, Coffman, Ito, Souki, Fontaine.
2/14/2012	H	Reported from CPC/JUD (Stand. Com. Rep. No. 363-12), recommending passage on Second Reading and referral to FIN.

2/14/2012	H	Passed Second Reading and referred to the committee(s) on FIN with none voting aye with reservations; none voting no (0) and C. Lee, M. Lee excused (2).
2/26/2012	H	Bill scheduled to be heard by FIN on Wednesday, 02-29-12 10:00AM in House conference room 308.
2/27/2012	H	Broadcast of hearing/briefing available. See: <a href="http://www.capitoltv.org">www.capitoltv.org</a>
3/1/2012	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 17 Ayes: Representative(s) Oshiro, M. Lee, Choy, Cullen, Giugni, Har, Hashem, Ichiyama, Jordan, Kawakami, C. Lee, Morikawa, Tokioka, Yamashita, Marumoto, Riviere, Ward; Ayes with reservations: none; Noes: none; and Excused: none.
3/2/2012	H	Reported from FIN (Stand. Com. Rep. No. 845-12), recommending passage on Third Reading.
3/6/2012	H	Passed Third Reading with none voting aye with reservations; none voting no (0) and Representative(s) Cabanilla, Manahan excused (2). Transmitted to Senate.
3/8/2012	S	Received from House (Hse. Com. No. 198).
3/8/2012	S	Passed First Reading.
3/8/2012	S	Referred to CPN/JDL, WAM.
3/9/2012	S	The committee(s) on CPN/JDL has scheduled a public hearing on 03-13-12 10:00AM in conference room 229.



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KEALI'I S. LOPEZ  
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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

AND

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Tuesday, March 13, 2012  
10:00 a.m.

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

TO THE HONORABLE ROSALYN H. BAKER AND CLAYTON HEE, CHAIRS,  
TO THE HONORABLE BRIAN T. TANIGUCHI AND MAILE S.L. SHIMABUKURO,  
VICE CHAIRS,  
AND MEMBERS OF THE 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 Committees may have.

WRITTEN ONLY

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

March 13, 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 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.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.

# HAWAII FINANCIAL SERVICES ASSOCIATION

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March 13, 2012

Senator Rosalyn H. Baker, Chair  
and members of the Senate Committee on Commerce and Consumer Protection  
Senator Clayton Hee, Chair  
and members of the Senate Committee on Judiciary and Labor  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 2375 (Mortgage Rescue Fraud Prevention Act)**  
**Hearing Date/Time: Tuesday, March 13, 2012, 10:00 a.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 purposes of this Bill are 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.

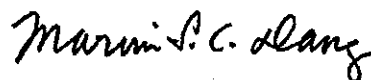
When the legislation which became Act 137 was before the 2008 legislature as H.B. 2326, we testified: "The HFSA believes that this Bill is needed to protect consumers who may be delinquent on their mortgage loans from scammers purporting to be mortgage foreclosure rescuers."

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 proposes to make 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.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



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March 13, 2012

**The Honorable Rosalyn H. baker, Chair**  
Senate Committee on Commerce and Consumer Protection

**The Honorable Clayton Hee, Chair**  
Senate Committee on Judiciary and Labor  
State Capitol, Room 229  
Honolulu, Hawaii 96813

**RE: H.B. 2375, Relating to the Mortgage Rescue Fraud Prevention Act**

**HEARING: Tuesday, March 13, 2012, at 10:00 a.m.**

Aloha Chair Baker, Chair Hee, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, submitting testimony on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR supports H.B. 2375 which establishes criminal penalties and a mandatory fine for certain violations of the Mortgage Rescue Fraud Prevention Act ("MRFPA"). Also, this measure establishes a special fund to enforce the MRFPA and for related public educational activities.

The MRFPA has helped to protect financially strapped homeowners, who are more vulnerable, from equity skimming and foreclosure rescue scams by deterring fraudulent activities. HAR applauds the Committees efforts to further deter these scams and fraudulent behavior by increasing the criminal penalties associated with the MRFPA.

Furthermore, HAR believes it is extremely valuable to use the funds collected towards enforcement, educating the public on the MRFPA, and informing consumers on fraudulent activities that may be committed against homeowners facing property foreclosures, liens or encumbrances. The two-fold approach of increasing the penalties and educating the consumer will serve to better protect homeowners and the consumer.

Mahalo for the opportunity to submit testimony.

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