

Presentation of the Committee on Consumer Protection and Commerce
Monday, March 14, 2011 at 2:00 p.m.
Testimony on SB 646 SD1 Relating to Escrow Depositories

In Opposition

TO: The Honorable Chair Robert N. Herkes
The Honorable Vice Chair Ryan I. Yamane
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in opposition to SD 646 SD1. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

This bill requires every person subject to section 454F-1.5 to include the person's unique identifier on every residential mortgage loan application submitted to an escrow depository in a real estate transaction; requires escrow depositories to report invalid unique identifiers to the commissioner of financial institutions.

While this bill is well intended, the bill forces escrow companies to police the mortgage loan originators instead of the responsible regulator.

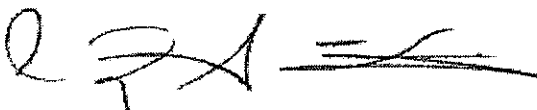
Federally regulated financial institutions are required to establish procedures and policies designed to ensure that any third party arrangements related to mortgage loan origination comply with the SAFE Act including validating appropriate licensing and/or registration of individuals acting as mortgage loan originators.

A federally regulated financial institution will check mortgage loan originator and company (MLO/C) identifiers with the National Mortgage Licensing System (NMLS). If the NMLS system check is not a positive match, then the loan application would not be accepted by the financial institution.

Requiring the MLO/C identifying number be placed on the mortgage application would subject personal financial information to be shared with a party that has no need for this confidential data. As you know, protection of personal information is very important to void unlawful use of the information.

This bill unfairly places escrow companies in an enforcement position that should be responsibility of a regulator. The added work, the cost for the additional auditing by the CPA firm and the added liability placed on the escrow company may lead to higher cost for consumers, potentially slow down the closing of the real estate purchase transactions and could cause last minute delays if the MLO information is incorrect.

Thank you for this opportunity to testify.



Gary Y. Fujitani
Executive Director



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March 11, 2011

The Honorable Robert N. Herkes
The Honorable Ryan I. Yamane
Members of the House Committee on
Consumer Protection & Commerce
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

Re: Senate Bill 646 S.D. 1 Relating to Escrow Depositories;
Nationwide Mortgage Licensing System Unique Identifier
Hearing Date: March 14, 2011, 2:00 p.m.

Dear Senators Herkes and Yamane and Members of the Committee:

On behalf of First Hawaii Title Corporation ("First Hawaii") we respectfully oppose Senate Bill 646 S.D. 1. First Hawaii is a duly licensed title and escrow company in the State of Hawaii.

Senate Bill 646 S.D. 1 amends *Hawaii Revised Statutes, Chapters 449* to require an escrow depository to verify the correct identifier number for mortgage loan originators, and to report any discrepancy regarding the same. The Bill places an extraordinary obligation on an escrow depository. Section 1, of the Bill states: "...an escrow depository shall require that the person include the person's unique identifier on all residential mortgage loan applications submitted to the escrow depository. An escrow depository shall not accept any documents subject to this section that do not include the required unique identifier."

A typical escrow does not require, nor normally include, the submission of a residential mortgage loan application and therefore the purpose of policing the registration and maintenance of unique identifiers for mortgage loan originators is not served. Further it is not clear what specific documents escrow is to reject if the unique identifier is not included. The Bill simply states that "any documents subject to this section" shall not be accepted, but the only document identified in the section is the residential mortgage loan application. In addition, the cost of the additional service to comply with the proposed law will ultimately have to be passed on to the consumer.

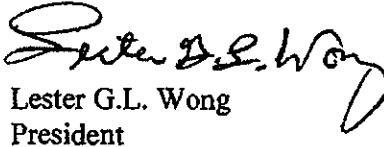
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House Committee on Consumer Protection & Commerce
March 11, 2011
Page 2

Further, we agree with the position taken by the Commissioner of Financial Institutions, Department of Commerce and Consumer Affairs in her testimony opposing the Bill. Under the federal Secure and Fair Enforcement of Mortgage Licensing Act of 2008 ("S.A.F.E.") the federal banking agencies have been delegated exclusive authority to ensure compliance with the requirement that mortgage loan originators register with, and maintain a unique identifier through the Nationwide Mortgage Licensing System and Registry. The proposed policing and reporting requirements in House Bill 646 have been federally preempted by S.A.F.E., and is therefore both invalid and unnecessary.

Thank you for your consideration of the foregoing.

Very Truly Yours,


Lester G.L. Wong
President