STAND. COM. REP. NO.

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Honolulu, Hawaii March 22, 2013

RE: S.B. No. 1370 S.D. 2 H.D. 1

Honorable Joseph M. Souki Speaker, House of Representatives Twenty-Seventh State Legislature Regular Session of 2013 State of Hawaii

Sir:

Your Committees on Consumer Protection & Commerce and Judiciary, to which was referred S.B. No. 1370, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MEDIATION AFFECTING JUDICIAL FORECLOSURE,"

beg leave to report as follows:

The purpose of this measure is to assist homeowners at risk of foreclosure by expanding the applicability of mandatory mortgage foreclosure dispute resolution.

Specifically, this measure:

SB1370 HD1 HSCR CPC-JUD HMS 2013-2819

- Requires mortgagees to engage in early intervention measures to attempt to mitigate loss to the homeowner, including through written notice no later than 45 days after the mortgage becomes delinquent;
- (2) Extends the existing Mortgage Foreclosure Dispute Resolution to require mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or to mitigate damages from foreclosure prior to filing a judicial foreclosure action for property that has been the mortgagor's primary residence for a specified period and institutes necessary notice requirements;

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- foreclosure actions, through requiring the submission by plaintiffs' counsel of written affirmations attesting to the attorney's personal knowledge and verification of the accuracy of documents submitted to the court and of the validity of the claim for foreclosure;
- (4) Applies the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this measure and pending an initial court hearing as of that date; and
- (5) Exempts mortgagees engaged in loss mitigation procedures with the mortgagor in compliance with statutory requirements from mediation requirements.

The Hawaii Financial Services Association, Mortgage Bankers Association of Hawaii, Hawaii Bankers Association, and Hawaii Credit Union League testified in opposition to this measure. The Office of Consumer Protection provided comments on this measure.

The Office of Consumer Protection testified that it prefers H.B. No. 1417, H.D.1, which is the companion bill to this measure, because the current measure does not adequately fulfill the Legislature's original intent of providing dispute resolution coupled with the assistance of a HUD-certified housing counselor to homeowners facing foreclosure. Therefore, your Committees have amended this measure by:

- (1) Deleting the language that requires mortgagees to attempt to engage in early intervention measures prior to filing a judicial foreclosure action and exempts mortgagees who do engage in early intervention from dispute resolution requirements;
- (2) Deleting requirements for attorneys' written affirmations in foreclosure filings;
- (3) Changing the effective date to July 1, 2112, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purpose of clarity, consistency, and style.

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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. 1370, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1370, 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,

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KARL RHOADS, Chair

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ANGUS L.K. MCKELVEY, Chair



State of Hawaii House of Representatives The Twenty-seventh Legislature



Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: 513 1370 5D 2	Committee Referral: CPC/JUD, FIN		J	Date: 3/14/13				
The committee is reconsidering its previous decision on the measure.								
The recommendation is to: Pass, unamended (as is) Pass, with amendments (HD) Hold Pass short form bill with HD to recommit for future public hearing (recommit) 								
CPC Members		Ayes	Ayes (WR)		Nays	Excused		
1. McKELVEY, Angus L.K. (C)		/			-			
2. KAWAKAMI, Derek S.K. (VC)								
3. BELATTI, Della Au								
4. BROWER, Tom		\checkmark						
5. CABANILLA, Rida T.R.								
6. CACHOLA, Romy M.								
7. CARROLL, Mele		V		-		•		
8. EVANS, Cindy								
9. HAR, Sharon E.						No.		
10. ITO, Ken								
11. LEE, Chris								
12. TSUJI, Clift		×/						
13. YAMANE, Ryan L								
14. MCDERMOTT, Bob		• /	•		V			
15. THIELEN, Cynthia		$\overline{}$						
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TOTAL (15)		0			1	4		
The recommendation is: Adopted If joint referral, did not support recommendation.								
Vice Chair's or designee's signature:								
Distribution: Original (White) – Committee Duplicate (Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO								

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Record of Votes of the Committee on Judiciary

Bill/Resolution No.:	Committee Referral:	Dates	Date:						
SB1370, SD2	CPC/JUD, FIN		3/14/13						
□ The committee is reconsidering its previous decision on the measure.									
The recommendation is to:									
Pass short form bill with HD to recommit for future public hearing (recommit)									
JUD Members	Ayes	Ayes (WR)	Nays	Excused					
1. RHOADS, Karl (C)									
2. HAR, Sharon E. (VC)									
3. BELATTI, Della Au	J								
4. BROWER, Tom									
5. CABANILLA, Rida T.R.									
6. CARROLL, Mele									
7. ITO, Ken				~					
8. KAWAKAMI, Derek S.K.		· · · · ·							
9. LEE, Chris									
10. TSUJI, Clift	✓								
11. WOOLEY, Jessica									
12. MCDERMOTT, Bob			~						
13. THIELEN, Cynthia	V								
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TOTAL (13)	9	0	l	3					
The recommendation is: 🖼 Adopted 🗆 Not Adopted									
If joint referral, did not support recommendation.									
Vice Chair's or designee's signature:									
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