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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
2:05 p.m.

TESTIMONY ON HOUSE BILL NO. 2203 – RELATING TO FORCE-PLACED INSURANCE.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Insurance Division (“Division”).

The Division supports the intent of this bill which ensures that homeowners are given proper notice before insurance is force-placed by lenders on their properties and defers to the Division of Financial Institutions on the application of Federal notice requirements.

Insurance serves a vital purpose in real property transactions. Owners and lenders benefit from its coverage whether it is actually accessed or not. During certain times, however, lenders may find that expected insurance coverages on properties are nonexistent. Then, to protect their interests as well as the owners, lenders purchase insurance coverages to be in effect until the property owners make their own purchases.

This bill establishes a procedure where the parties are in communication and time is given for owners to make their necessary purchases. Failing that, lenders may then proceed to make purchases of reasonably priced insurance. The future cancellation of the lenders’ purchased policies upon presentation of reasonable proof of

House Bill No. 2203
DCCA Testimony of Gordon Ito
Page 2

owners' purchases is in line with § 431:10E-102, Hawaii Revised Statutes, which prohibits the over-insurance of properties.

The refund of premium and fees to owners during the period of over-insurance is also appropriate when it is shown that owners were not given proper notice, pursuant to Federal notice requirements, that insurance needed to be purchased by them on their properties.

We thank this Committee for the opportunity to present testimony on this matter.



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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

WEDNESDAY, FEBRUARY 3, 2016
2:05 p.m.

**TESTIMONY ON H.B. No. 2203
RELATING TO FORCE-PLACED INSURANCE**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs in providing
comments on H.B. No. 2203.

Long standing federal law 12 CFR 1024.37¹ (Real Estate Settlement Procedures
Act of 1974, as amended, 12 U.S.C. 2601 et. seq) requires a notice to borrowers before
the lender can buy insurance to protect its collateral. This collateral insurance or "force-

¹ Since November 2013, CFPB (Consumer Financial Protection Bureau) is the lead regulator for 12 CFR 1024.

placed insurance” is hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan.

Federal law provides lenders can purchase:

1. Hazard insurance required by the Flood Disaster Protection Act of 1973,
2. Hazard insurance required when the mortgage payment is more than 30 days late, and
3. Hazard insurance obtained by the borrower, but renewed by the borrower's mortgage servicer or lender by borrower's agreement.

Notice must state among other things that lender insurance may cost more than the insurance purchased by the borrower. Further the lender or servicer must provide the following before purchasing the force-placed insurance:

1. Deliver or mail a written notice stating that the borrower must provide evidence of hazard insurance to the lender or servicer or the lender or servicer will have to purchase the hazard insurance;
2. The notice must be provided 45 days before the lender or servicer assesses the fee;
3. The lender or servicer can charge the borrower for the insurance 15 days after the end of the notice date; and
4. The lender or servicer may send a reminder notice 30 days after the date of the first notice.

Further the lender or servicer must cancel the force-place insurance within 15 days of receiving evidence from the borrower that the borrower has continuous coverage. The lender or servicer must also refund the unused portion of the premium and related fees for the overlapping insurance coverage (if any). The lender or servicer may charge a bona fide and reasonable charge for the servicer's cost for providing the service.

The Division notes that this bill has different provisions than the federal law that the lenders and servicers must comply with. It may cause confusion with consumers who may receive numerous notices about the hazard insurance. The differences with federal law include:

1. The timing of the notices prior to purchasing the hazard insurance. The bill allows for 6 months, the federal law is 45 days. The Division notes that the insurance company will typically not allow the renewal of the insurance until about 30 to 45 days prior to the expiration of the policy.
2. The notice in the bill is by postmark. The federal law is delivery (or mailed).
3. Contents of the notice is different than federal law. The federal notice states how the borrower must show evidence of insurance.
4. The lender will not allow the mortgage to be "bare" (without insurance coverage) during any time of the mortgage. There have been cases where a disaster flood or tornado occurred when the property was not covered for one day. Where the

insurance was not continuous, the borrower still has to pay the mortgage without the property.

Thank you for the opportunity to provide these comments on House Bill No. 2203. I would be pleased to respond to any questions you may have.



Advocacy. Leadership. Results.

To: The Honorable Angus L.K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

From: Mark Sektnan, Vice President

Re: HB 2203 Relating to Force-Placed Insurance
PCI Position: Oppose

Date: Wednesday, February 3, 2016
2:05 p.m., Room 325

Aloha Chair McKelvey, Vice Chair Woodson and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to HB 2203 which would set strict restrictions on lender placed insurance.

In Hawaii, PCI member companies write approximately 42.7 percent of all property casualty insurance written in Hawaii. PCI member companies write 44 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

Lender placed insurance is placed on the property by the lender, not the insurer. The insurer's contract is with the lender, not the homeowner, and it is the decision of the lender to place this insurance on the property in question. The insurance is not placed unless the mortgage holder has violated the terms of the contract with the lender and failed to maintain homeowners' insurance.

Lender placed insurance plays an important part in the United States housing market by providing protection to homeowners, lenders, and investors when a borrower fails to maintain insurance on the collateral for a loan. This type of insurance is typically treated as "specialty" insurance" because it generally involves a large premium and/ or a special, unique or unusual risk." Typically a large financial institution pays a large premium for a number of properties they want insured in the event one or many homeowners lapse their homeowner's coverage. The unique or unusual risk with lender placed insurance is that insurers generally do not "underwrite" the large number of properties they are required to cover under the master policy, so there is no data available for insurers to assess the properties covered ahead of time. Stated differently, lender placed insurance cover properties "as is." Consider the following hypothetical: Homeowners X's insurance policy lapses on Monday, and the home catches fire early Tuesday morning. Under this scenario, a lender placed insurance must cover those damages.

According to HB 2203, “lender placed homeowners insurance has been the focus of recent attention due to allegations that lenders are charging homeowners high premiums when the homeowners could purchase the same insurance for much less.” As discussed above, the rationale for higher premiums for lender placed insurance is based on the fact that there is no insurance underwriting and properties are covered “as is.” The best way for a homeowner to ensure they are paying reasonable rates on their property insurance is to maintain their own policy, as they are required by the mortgage contract. Furthermore, outside of the regulatory oversight, it is important to note that lender placed insurance is contractually agreed upon by the lender and borrower, and thus a breach of contract type of action is available from both parties.

For these reasons, PCI requests that **HB 2203** be held in committee.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 9:06 AM
To: CPCtestimony
Cc: kulalaplace@gmail.com
Subject: Submitted testimony for HB2203 on Feb 3, 2016 14:05PM

HB2203

Submitted on: 2/2/2016

Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez	Individual	Support	No

Comments: Thank you for the opportunity to be heard and invited to submit this written testimony in support of HB 2203 and any other legislative attempts to eradicate foreclosure fraud. Foreclosure fraud isn't sexy. It's complicated, layered with corruption, and considered a problem only for those who've lived it. It's ignored as a bygone issue. Those living foreclosure are not deadbeats (that would be an ignorant assumption) they are courageous warriors and the unfortunate benefactors of post traumatic stress from White Collar crime. This legislation, is a very thoughtful effort, but in the world of foreclosure, a world unto itself, this legislation is meaningless. White Collar criminals will continue to dance around the language of the law and change up their scams. How do I know this? Because I've lived it for seven years. There's a Bermuda Triangle sized disconnect between courtrooms and living rooms. White Collar criminals banked on that. We get that judges don't want to rule on fraud. They base their judgements on contractual law using mortgage contracts authored by thieves. These contractual laws were intercepted by fraud. These foreclosures weren't incomplete passes by homeowners; they were interceptions by lenders, homeowners' associations, insurance companies, title companies, Fannie Mae and Freddie Mac, Wall Street, notaries public, and the law firms that support them. When a loan is intercepted by fraud the homeowner is benched and replaced by another player before the foreclosure has even started. We, the homeowners, do understand the rampant unimaginable greed of financial institutions that goes unpunished--Hollywood does too. We had hoped recent films would have made a powerful impact but that hasn't happened, yet. So Hollywood and many other industries have also capitalized on our loss. This is the decade of our discontent. If this legislation passes it must pursue consequence and enforcement and accountability. This state and country, with the exception of a few trailblazers, have turned a blind eye to the mortgage and foreclosure crimes of the past, present, and future. As long as financial institutions are allowed to get away with crimes they will become endemic. The homeowner is still the sacrificial lamb. They pay not only from their pockets, but with their heart and soul, digestive systems, and central nervous systems. These systems, like the legislative and judicial systems, are now irreparably damaged. Where do we go from here? Perhaps Iceland. Mahalo. Aloha, Debbie Ramirez Waianae, Hawai'i

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Presentation To
House Committee on Consumer Protection & Commerce
February 3, 2016 at 2:05 PM
State Capitol Conference Room 325

Testimony in OPPOSITION to House Bill 2203

TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

Force place insurance is a rare event that occurs only when the borrower cancels the required homeowners insurance and the lender is forced to obtain insurance on the property. Even if the borrower fails to make the monthly payment, the lender continues to pay the premium on the homeowners insurance until the borrower cancels the insurance or the property is sold. The bank does not have the right to cancel the insurance and thus, it is solely within the power of the borrower whether the bank is forced to obtain forced place insurance.

The Real Estate Settlement Procedures Act (RESPA) provides federally mandated procedures for force placed insurance. The proposed changes in HB 2203 would conflict with some of the provisions as set forth by RESPA. For example, RESPA provides that the borrower should have 45 days to secure an insurance policy. The six months proposed in this measure is excessive and unnecessary time frame to obtain insurance.

Force placed insurance is much more costly than a policy a borrower may be able to obtain and is used as a last resort. The lender would much prefer the borrower to obtain their own insurance. It is more expensive because there is greater risk for the insurance carriers due to the circumstances for placement. The borrower can totally avoid force placement by not canceling their own insurance policy.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.



Edward Y. W. Pei
(808) 524-5161

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

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LATE

February 3, 2016

Rep. Angus L.K. McKelvey, Chair
Rep. Justin H. Woodson, Vice Chair
and members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **H.B. 2203 (Force-placed insurance)**
Hearing Date/Time: Wednesday, February 3, 2016, 2:05 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 **opposes** this Bill as drafted.

The purposes of this Bill are to require financial institutions and mortgage servicers to: provide written notice to borrowers regarding the status of their insurance coverage; obtain force-placed insurance subject to certain conditions; and terminate and refund any moneys to the borrower upon receipt of the confirmation of a borrower's existing insurance coverage.

This Bill states that “force-placed insurance, also known as creditor-placed, lender-placed, or collateral protection insurance, is an insurance policy placed by a lender, bank, or loan servicer on a home when the property owner's own insurance is canceled, has lapsed, or is deemed insufficient and the borrower does not secure a replacement policy. Force-placed insurance allows a lender to protect its financial interest in the property.”

Clearly, if the property owner (“borrower”) doesn’t cancel their own insurance policy, or if their own insurance policy hasn’t lapsed, or if their own insurance is sufficient, or if they obtain a replacement insurance policy, there is no need for the lender to obtain force-placed insurance. The borrower is in control of the situation. The lender only obtains force-placed insurance as the last resort.

Here are our concerns about this Bill:

1. This Bill is inconsistent with national standards for force-placed insurance. Those standards were issued by the Consumer Financial Protection Bureau as Regulation X, which implements the Real Estate Settlement Procedures Act, and which was effective on January 10, 2014. Regulation X provides protections to borrowers in connection with force-placed insurance. There are content and timing requirements in Regulation X. Among other things, Regulation X requires that a notice be sent to a borrower at least 45 days before a lender can charge a borrower for force-placed insurance. Inconsistently, this Bill has a 6 month notice period.

2. We incorporate by reference the various concerns raised in the testimonies of the Mortgage Bankers Association of Hawaii and the Hawaii Bankers Association.

Accordingly, we ask that your Committee “hold” this Bill and not pass it. Thank you for considering our testimony.

Marvin S. C. Dang

MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

LATE

February 2, 2016

The Honorable Angus L.K. McKelvey, Chair,
The Honorable Justin H. Woodson, Vice Chair, and
Members of the Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

Re: House Bill 2203, Relating to Force-Placed Insurance

Chair McKelvey, Vice Chair Woodson, and Committee Members:

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate and service or support the origination and servicing of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending and servicing.

The MBAH opposes House Bill 2203. Force-placed insurance allows the lender to protect its interest in the property used as collateral for the mortgage loan if the borrower cancels or allows the insurance policy to lapse.

The bill states that force-placed insurance premiums are more expensive than what a property owner can obtain on their own. Yes, this is a correct statement. However, there are inherent risks with properties with force-placed insurance. Lenders do not profit from force-placed insurance and lenders do not share in the premiums.

The Real Estate Settlement Procedures Act (RESPA) also known as Regulation X (Reg X) was updated with the new Consumer Financial Protection Bureau (CFPB) requirements in 2014. Reg X requires that a notice be sent to the borrowers at least 45 days before a lender can charge a borrower for force-placed insurance. If the lender does not receive the evidence of insurance within 30 days of the 45 day notice, another notice is required to be sent to the borrower. On the 46th day of not receiving an insurance policy, the lender can force-place and send a notice of force-placement to the borrower. The content of each force-place notice is specified by the CFPB and the lender needs to comply and use the specific language provided by the CFPB. Allowing the borrower 6

months to purchase insurance is in direct conflict of the Reg X requirements. No prudent individual needs 6 months to obtain insurance.

With respect to the cancellation of force-placed insurance, Reg X already requires that a lender cancel the force-placed insurance within 15 days of receiving evidence of proper insurance.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA
Mortgage Bankers Association of Hawaii



Testimony to the House Committee on Consumer Protection & Commerce
February 3, 2016

Testimony in Opposition to HB 2203, Relating to Force-Placed Insurance

To: The Honorable Angus McKelvey, Chair
The Honorable Justin Woodson, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 63 Hawaii credit unions, representing over 800,000 credit union members across the state. We are opposed to HB 2203, Relating to Force-Placed Insurance.

Currently, approximately 50 credit unions offer mortgages.

Force-placed insurance is something that would happen only if a borrower cancels their homeowners' insurance policy. Force-placed insurance would be a matter of last resort, and is not something the lender wants to do. The financial institution makes no profit from force-placed insurance.

We oppose this bill because it is not necessary. Under Regulation X of the Real Estate Settlement Procedures Act (RESPA), it is required that a notice be sent to the borrowers at least 45 days before a lender can charge a borrower for force-placed insurance. Without receiving evidence of insurance within 30 days of the 45 day notice, another notice is required to be sent to the borrower. On the 46th day, the lender can force-place insurance with notice sent to the borrower. Therefore, the 6-months proposed by HB 2203 is in conflict with federal regulation.

Thank you for the opportunity to provide comments.

From: Maile Shimabukuro <maileshimabukuro@yahoo.com>
Sent: Wednesday, February 03, 2016 3:04 PM
To: shimabukuro3 - Sara
Subject: Fw: Fwd: Submitted testimony for HB2203 on Feb 3, 2016 14:05PM

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Wednesday, February 3, 2016, 3:02 PM, Laura Cristo <lauracristo61@gmail.com> wrote:

Maile,

Here is my testimony, submitted on Monday.

Aloha,
Laura Cristo

LATE

LATE

----- Forwarded message -----

From: <mailinglist@capitol.hawaii.gov>
Date: Feb 1, 2016 4:01 PM
Subject: Submitted testimony for HB2203 on Feb 3, 2016 14:05PM
To: <CPCtestimony@capitol.hawaii.gov>
Cc: <lauracristo61@gmail.com>

HB 2203

Submitted on: 2/1/2016
Testimony for CPC on Feb 3, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Laura Cristo	Individual	Support	No

Comments: I submit this written testimony in support of HB 2203 "Force-Placed Insurance" (the companion to SB 2745). My family has been damaged by foreclosure due to the harmful outcomes of Forced-Placed Insurance. For insurance companies to increase the cost and coverage of insurance without consulting homeowners is wrong and unAmerican. Plain and simple--these are the tactics of a Fourth World country. Americans, in particular the State of Hawaii, must be better protected from unregulated insurance agencies, lenders, and mortgage servicers. This practice allows insurance companies to add unnecessary charges without informing homeowners thereby laying the foundation for foreclosure. This, is very wrong. Strict regulation of Force-Placed Insurance must also be mandated as the consequences for homeowners are far too great. As long as Insurance companies are not sanctioned this unsafe and unsound business practice will continue. This legislation must be passed otherwise all

homeowners in Hawaii are at the mercy of unscrupulous insurance agencies and practices. Hawaii Courts are clogged down with wrongful foreclosures, in part, because of Force-Placed Insurance. Please help put an end to this and pass HB 2203 Thank you. Sincerely, Laura Cristo Waianae, Hawaii Laura Cristo

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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