

S.B. NO. 1215

JAN 24 2019

A BILL FOR AN ACT

RELATING TO MORTGAGE SERVICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 454M, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§454M- Enforcement authorities. (a) If the
5 commissioner has reason to believe that a person has violated or
6 is violating section 454M-2, the commissioner may issue orders
7 or directives under this chapter as follows:

8 (1) Order or direct persons subject to this chapter to
9 cease and desist from conducting business, including
10 immediate temporary orders to cease and desist;

11 (2) Order or direct persons subject to this chapter to
12 cease any harmful activities or violations of this
13 chapter, including immediate temporary orders to cease
14 and desist;

15 (3) Enter immediate temporary orders to cease doing
16 business under a license issued pursuant to the
17 authority granted under this chapter if the
18 commissioner determines that the license was

S.B. NO. 1215

1 erroneously granted or the licensee or any person
2 subject to this chapter is currently in violation of
3 this chapter; or

4 (4) Order or direct any other affirmative action as the
5 commissioner deems necessary.

6 (b) An order to cease and desist becomes effective upon
7 service of the order upon the person.

8 (c) An order to cease and desist remains effective and
9 enforceable pending the completion of an administrative
10 proceeding pursuant to chapter 91.

11 (d) The commissioner shall commence an administrative
12 proceeding within twenty days after issuing an order to cease
13 and desist."

14 SECTION 2. Section 454M-4, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) To the extent reasonably necessary to [~~participate~~
17 ~~in~~] use NMLS, the commissioner may modify, in whole or in part,
18 by rule or order, any or all of the requirements of [subsections
19 ~~(e) and (i).~~] this chapter and establish new requirements."

20 SECTION 3. Section 454M-7, Hawaii Revised Statutes, is
21 amended to read as follows:

S.B. NO. 1215

1 " ~~[+] §454M-7 [+] License sanctions; [suspension, revocation,~~
2 ~~denial, condition, and refusal to renew, reinstate, or restore.]~~
3 cease and desist and other orders. (a) In addition to any
4 other actions authorized by law, the commissioner may suspend,
5 revoke, deny, condition in any manner, or refuse to renew,
6 reinstate, or restore, any license issued under this chapter, or
7 fine any person holding a license issued under this chapter, for
8 any violation of this chapter. All such orders shall be made
9 pursuant to chapter 91[-], except as provided by section 454M-
10 or another provision of this chapter.

11 (b) If the commissioner finds that a violation of this
12 chapter or a rule adopted or an order issued under this chapter
13 by a licensee is likely to cause immediate and irreparable harm
14 to the licensee, the licensee's customers, or the public as a
15 result of the violation, or is likely to cause insolvency or
16 significant dissipation of assets of the licensee, then the
17 commissioner may issue an order requiring the licensee to cease
18 and desist from the violation. The order becomes effective upon
19 service of the order upon the licensee.

20 (c) The commissioner may enter into a consent order at any
21 time with a person to resolve a matter arising under this
22 chapter. A consent order shall be signed by the person to whom

S.B. NO. 1215

1 the order is issued or by the person's authorized representative
2 and shall indicate agreement with the terms of the order. A
3 consent order may provide that it does not constitute an
4 admission by a person that this chapter or a rule adopted or an
5 order issued under this chapter has been violated."

6 SECTION 4. Section 454M-8, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§454M-8 Powers of commissioner.** In addition to any other
9 acts or conditions provided by law, the commissioner may:

- 10 (1) Adopt, amend, or repeal rules, issue declaratory
11 rulings or informal nonbinding interpretations, and
12 investigate and act upon written consumer complaints;
- 13 (2) Grant, deny, forfeit, renew, reinstate, or restore the
14 license of any mortgage servicer;
- 15 (3) Revoke, suspend, or otherwise limit the license of any
16 mortgage servicer for any violation of the provisions
17 in this chapter, or any rule or order of, or agreement
18 with the commissioner;
- 19 (4) Issue orders to cease and desist and enter into
20 consent orders;
- 21 [~~4~~] (5) Report any violation of this chapter or violation
22 of federal or state law to the Consumer Financial

S.B. NO. 1215

1 Protection Bureau or other federal agency having
2 jurisdiction over the licensee;
3 ~~[(5)]~~ (6) Investigate and conduct hearings regarding any
4 violation of this chapter, or any rule or order of or
5 agreement with the commissioner; and
6 ~~[(6)]~~ (7) Do any and all things necessary or incidental to
7 the exercise of the commissioner's power and duties,
8 including the authority to conduct contested case
9 proceedings under chapter 91."

10 SECTION 5. Section 454M-10, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§454M-10 Penalty.** Any person who violates any provision
13 of this chapter, rule adopted or order issued pursuant to this
14 chapter, or agreement with the commissioner may be subject to an
15 administrative fine of not more than \$7,000 for each violation;
16 provided that if the aggregate fine amount exceeds \$7,000,
17 \$1,000 of the aggregate fine amount shall be deposited into the
18 mortgage foreclosure dispute resolution special fund established
19 pursuant to section 667-86."

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

S.B. NO. 1215

1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: AMN. CH.

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BY REQUEST

S.B. NO. 1215

Report Title:

Mortgage Servicers; Commissioner of Financial Institutions; Unlicensed Persons; Cease and Desist; Consent Order; Chapter 91; Administrative Proceeding; Rules; NMLS; Violation

Description:

Authorizes the Commissioner of Financial Institutions to modify requirements and make new requirements in chapter 454M, Hawaii Revised Statutes, to implement changes and improvements made to NLMS. Authorizes the Commissioner of Financial Institutions to issue cease and desist orders against licensees and unlicensed persons and to enter into consent orders.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS.

PURPOSE: To give the Commissioner of Financial Institutions (Commissioner) authority to: (1) modify requirements and make new requirements in chapter 454M, Hawaii Revised Statutes (HRS), to implement changes and improvements made to the Nationwide Mortgage Licensing System (NMLS); and (2) issue cease and desist orders against licensees and unlicensed persons to quickly stop harmful activity, and enter into consent orders.

MEANS: Add a new section to chapter 454M and amend sections 454M-4(c), 454M-7, 454M-8, and 454M-10, HRS.

JUSTIFICATION: It is necessary to augment the Commissioner's authority to implement changes and improvements made to NMLS. This will enable the Department of Commerce and Consumer Affairs' Division of Financial Institutions to better use NMLS to manage the licensure of mortgage servicers without burdening licensees. In addition, authorizing the Commissioner to issue cease and desist orders will enable the Commissioner to act swiftly to minimize consumer harm. The Commissioner's authority to enter into consent orders will also expedite decisions and save resources.

Impact on the public: Implementing updates made to NMLS will save time for applicants and licensees and increase their ease in using the system. The Commissioner's authority to swiftly issue cease and desist orders against chapter 454M violators will improve consumer protection. The Commissioner's ability to enter into consent orders will expedite decisions and save the parties resources.

Impact on the department and other agencies:

None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.