

Honolulu, Hawaii
Feb 28, 2008

RE: H.B. No. 2408
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 2408 entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE BROKERS,"

begs leave to report as follows:

The purpose of this bill is to improve the regulation of mortgage brokers and mortgage solicitors by, among other things:

- (1) Transferring regulatory oversight within the Department of Commerce and Consumer Affairs (DCCA) from the Director of Commerce and Consumer Affairs to the Commissioner of Financial Institutions (Commissioner);
- (2) Authorizing the Commissioner to examine mortgage brokers and solicitors (now known as loan originators under this bill) for compliance with laws, and to impose fines and suspend, restrict, revoke, or terminate licenses for violations;
- (3) Requiring pre-licensure examinations;
- (4) Requiring license applicants to disclose arrest and conviction records;
- (5) Establishing continuing education requirements for license renewals;



- (6) Setting bond amounts depending on the size of the brokerage firm;
- (7) Requiring mortgage brokerage firms to designate a principal mortgage broker responsible for the supervision and management of the firm and its mortgage brokers and loan originators;
- (8) Adding restrictions on advertising, including prohibiting misleading communications or advertisements, and on door-to-door sales; and
- (9) Increasing the monetary penalty for violations of the mortgage broker law.

The Hawaii Association of Mortgage Brokers, Hawaii Credit Union League, State Farm Insurance Companies, First Hawaiian Bank, and Primerica Financial Services Home Mortgages, Inc., testified in support of this bill. The Hawaii Financial Services Association supported the intent of this measure. DCCA opposed this bill.

Your Committee has amended this bill by, among other things:

- (1) Removing the provision specifying that the mortgage broker law does not make a loan originator an employee of the mortgage broker, notwithstanding the supervisory duties of the mortgage broker over the loan originator;
- (2) Exempting mortgage brokers who qualify as foreign lenders from having to register to do business in Hawaii and to maintain a principal place of business in Hawaii for business transactions;
- (3) Adding provisions authorizing the Commissioner to establish and modify by rule requirements necessary for Hawaii to participate in a Uniform Multistate Automated Licensing System for mortgage brokers and individual loan originators;
- (4) Defining "mortgage brokerage agreement" and other terms and amending provisions of the mortgage broker law to restrict the law to residential mortgage loans only;



- (5) Allowing licensees to initiate prearranged meetings at the borrower's home for the purpose of offering, soliciting, or selling residential mortgage loans;
- (6) Providing exemptions from the mortgage broker law for the following:
 - (A) Employees and agents of a bank affiliate wholly owned by the holding company that owns the bank; and
 - (B) Clerical and administrative employees of a mortgage brokerage firm who do not solicit borrowers or negotiate the terms of residential mortgage loans;
- (7) Authorizing the Commissioner to revoke, suspend, or restrict licenses or to impose fines for the following:
 - (A) Without the potential borrower's express consent:
 - (i) Filling in residential mortgage loan applications with material information; or
 - (ii) Filling in any instrument evidencing or securing a residential mortgage loan with information relating to the loan amount, interest rate, or monthly payment of the loan;
 - (B) Making payment to any appraiser to influence the valuation of the residential real property that will secure a residential mortgage loan; and
 - (C) Conditioning an appraiser's compensation on establishing a certain value for residential real property that will secure a residential mortgage loan;
- (8) Specifying the types of fees that a mortgage broker or loan originator may charge a borrower prior to the loan closing, including processing, application, rate lock, commitment, and cancellations fees;
- (9) Changing the effective date to July 1, 2050, to encourage further discussion; and



- (10) Making technical, nonsubstantive amendments for clarity and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2408, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2408, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



