

Honolulu, Hawaii

MAR 20 2008

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

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and
Affordable Housing, to which was referred H.B. No. 2408, H.D. 1,
entitled:

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

begs leave to report as follows:

The purpose of this measure is to provide further oversight,
regulation, and licensure of mortgage brokers and solicitors in
the State by amending chapter 454, Hawaii Revised Statutes,
relating to mortgage brokers and solicitors.

Specifically, this measure extensively amends chapter 454,
Hawaii Revised Statutes, by:

- (1) Transferring regulatory oversight within the Department
of Commerce and Consumer Affairs from the Director of
Commerce and Consumer Affairs to the Commissioner of
Financial Institutions;
- (2) Providing exemptions from the mortgage broker law;
- (3) Expanding licensing and license renewal requirements for
mortgage brokers and loan originators;
- (4) Authorizing the Commissioner of Financial Institutions
to examine mortgage brokers and solicitors (renamed as
loan originators) for compliance with laws, and to



- impose fines and suspend, restrict, revoke, or terminate licenses for violations;
- (5) Defining advertising requirements;
 - (6) Allowing participation in the uniform multistate automated licensing system; and
 - (7) Establishing fines and penalties for enforcement purposes.

Testimony in support of this measure was submitted by the Office of Hawaiian Affairs; State Farm Insurance Companies; the Hawaii Association of Mortgage Brokers; Primerica Financial Services Home Mortgages, Inc.; the Hawaii Financial Services Association; the Hawaii Credit Union League; the ILWU Local 142; and eleven private individuals. Testimony in opposition to this measure was submitted by the Department of Commerce and Consumer Affairs, the Hawaii Bankers Association, and the Mortgage Bankers Association of Hawaii.

The residential real estate boom of the past several years, which has only recently come to an abrupt end, spawned a significant number of national complaints against mortgage brokers. These complaints continue as borrowers find that what they had understood to be a "good" loan was in fact not as good as expected. Increased loan rates, prepayment penalties, esoteric repayment schedules and fraud have all contributed to create what the U.S. Federal Bureau of Investigation has termed, "the fastest growing white collar crime in the country." While the volume of complaints in Hawaii has not been as overwhelming as that seen on the mainland, complaints here are tracking on a continuous and disturbing upward trend, which shows little signs of declining.

The responsibility for the licensing of mortgage brokers and loan originators (or mortgage solicitors) currently rests with the Professional and Vocational Licensing (PVL) Division of the Department of Commerce and Consumer Affairs pursuant to chapter 454, Hawaii Revised Statutes. PVL's oversight of mortgage brokers and solicitors is essentially limited to the registration of licensed brokers and solicitors. Your Committee finds that mere registration is no longer adequate in light of the problems within the lending industry and a unified, effective, and seamless supervision of the residential mortgage industry's activities in the State is needed to protect Hawaii consumers and homeowners.



Consumer interests will be better protected by charging a single division (Division of Financial Institutions of the Department of Commerce and Consumer Affairs) with the overall supervision of the licensing, examination, and regulation of mortgage brokers and loan originators.

Your Committee notes the concerns raised and various suggested amendments submitted to improve this measure, and recognizes the efforts made by various parties who worked together in developing language to effectively and efficiently regulate the residential mortgage industry. Your Committee recognizes the federal legislation regarding the regulation of mortgage brokers currently pending in Congress, and has considered amending language in the submitted proposed drafts of this measure to ensure that, if enacted, this measure will correspond with the federal legislation.

Accordingly, your Committee has amended this measure by:

- (1) Deleting its contents and replacing it with language proposed by the Department of Commerce and Consumer Affairs that:
 - (A) Clarifies exemptions and prohibited activities;
 - (B) Authorizes the Commissioner of Financial Institutions to establish application requirements;
 - (C) Authorizes the participation in a uniform multistate automated licensing system to expedite licensing procedures and information sharing;
 - (D) Authorizes the Division of Financial Institutions to examine licensees and provides for the confidentiality of all examination related information;
 - (E) Authorizes the Commissioner of Financial Institutions to investigate or enjoin any individual for violations, and to set fees, commissions, and charges for licenses;
 - (F) Establishes a fine of not more than \$5,000 for a violation, or imprisonment of not more than one year, or both, or a fine not more than \$10,000 for



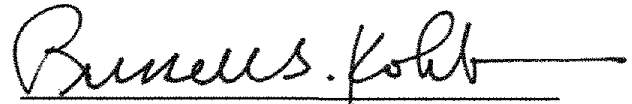
a violation that includes conduct that is directed towards or committed against an elder;

- (G) Regulates advertising of mortgage broker or loan originator services;
 - (H) Regulates the requirements for written agreements for any transaction between a mortgage broker or a loan originator and a borrower;
 - (I) Amends various sections of the Hawaii Revised Statutes to implement the transition and implementation of the mortgage brokers law under the Division of Financial Institutions;
 - (J) Repeals chapter 454, Hawaii Revised Statutes, relating to the licensing and regulation of mortgage brokers and solicitors;
 - (K) Appropriates \$140,000 out of the Compliance Resolution Fund to carry out the purposes of the measure, including the hiring of additional staff for the Division of Financial Institutions; and
 - (L) Establishes a timeline to phase-out the licenses issued under chapter 454, Hawaii Revised Statutes, and implement requirements for licenses issued under the new chapter relating to mortgage brokers and loan originators;
- (2) Inserting an effective date of July 1, 2008 to ensure further discussion on this matter; and
 - (3) Making technical, nonsubstantive amendments for the purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2408, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2408, H.D. 1, S.D. 1, and be referred to the Committees on Judiciary and Labor and Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,




RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Commerce, Consumer Protection and Affordable Housing
CPH

Bill / Resolution No.:	Committee Referral:	Date:		
HB 2408 HD1	CPH, JDL/WAM	3-18-08		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	✓			
IGE, David Y. (VC)				✓
ESPERO, Will	✓			
IHARA, Jr., Les				✓
SAKAMOTO, Norman				✓
TANIGUCHI, BRIAN T.	✓			
TRIMBLE, Gordon		✓		
TOTAL	3	1	0	3
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

*Only one measure per Record of Votes