

Honolulu, Hawaii

MAY 01 2009 , 2009

RE: S.B. No. 1218
S.D. 2
H.D. 2
C.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1218, S.D. 2, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE LOAN ORIGINATORS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to bring Hawaii into compliance with federal law by implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act of 2008).

Your Committee finds that this measure complies with the requirements of the federal S.A.F.E. Mortgage Licensing Act of 2008. Your Committee further finds that the purpose of the S.A.F.E. Mortgage Licensing Act of 2008 is to "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud" by encouraging the states to regulate the mortgage industry. Your Committee notes that this measure is based on a model act prepared



by the Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators that the United States Department of Housing and Urban Development has approved as compliant with the federal law.

Your Committee notes that, under the S.A.F.E. Mortgage Licensing Act of 2008, failure of the State to implement conforming legislation would result in abdication of the State's right to regulate the mortgage industry and assignment of that right to the federal Department of Housing and Urban Development. Your Committee finds that this result would be unacceptable as it is critical that the State retain its right to respond to unique local circumstances in regulating the mortgage industry.

Your Committee notes that this measure establishes the regulatory framework mandated by federal law, but recognizes that this new framework will remain subject to additional improvements as the Division of Financial Institutions (Division) implements the provisions of this measure. Your Committee notes that this measure calls on the Commissioner of Financial Institutions (Commissioner) to report to the Legislature on the Division's process of implementing this measure, including guidance from the Department of Housing and Urban Development, and to make recommendations for further legislation. It is the intent of your Committee that the Commissioner's report serve as the basis for cooperation between the Division and the Legislature to effectively implement this measure. Finally, your Committee finds that the fee structure contained in this measure will allow the mortgage originator regulatory system to be financially self-sufficient.

Your Committee has amended this measure by:

- (1) Adding a findings and purpose section;
- (2) Deleting the definitions of "agent", "borrower", and "mortgage loan origination agreement";
- (3) Specifying that "individual" means a natural person;
- (4) Clarifying that an individual required to be licensed as a mortgage loan originator shall obtain licensure by August 1, 2010, or such later date approved by the United States Department of Housing and Urban Development pursuant to authority granted under Public Law 110-289, section 1508(e);



- (5) Specifying that the requirements of federal or state law regarding privacy and confidentiality of information shall apply to information or material that has been disclosed to the Nationwide Mortgage Licensing System;
- (6) Specifying that the person who holds a privilege relating to information provided to the Nationwide Mortgage Licensing System has discretion to waive that privilege in whole or in part;
- (7) Adding a provision to grant the Commissioner the authority to control access to or take possession of the documents or records of a person under examination or investigation;
- (8) Adding provisions to grant the Commissioner the authority to retain personnel, cooperate with other government officials or regulatory agencies, procure analytical systems or software, rely on investigation reports by other government officials, and accept audit reports from independent certified public accountants in the conduct of investigations or examinations;
- (9) Adding a provision to specify that the Commissioner's authority to conduct examinations or investigations is effective regardless of whether the licensed mortgage loan originator, individual, or person subject to regulation under this measure purports to act pursuant to any licensing or registration law of this State;
- (10) Adding a provision to prohibit any licensed mortgage loan originator, individual, or person subject to investigation or examination from knowingly withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information;
- (11) Amending the definition of "creditor" to include mortgage solicitors;
- (12) Excluding the officers, directors, partners, members, managers, employees, and agents of an applicant for licensure as a mortgage loan originator from the Department of Commerce and Consumer Affairs' authority to conduct criminal background checks;



- (13) Adding a new provision to specify that as of August 1, 2010, no new license or renewal of a license shall be issued under chapter 454, Hawaii Revised Statutes;
- (14) Adding a new provision to specify that as of the date that an individual is required to be licensed under this measure, the remaining pro rata balance of the fees paid by that individual pursuant to chapter 454, Hawaii Revised Statutes, shall be applied to the individual's fees due under this measure;
- (15) Adding a new provision to specify that an individual shall not be subject to chapter 454, Hawaii Revised Statutes, as of the effective date of that individual's license under this measure;
- (16) Requiring the Commissioner to report to the Legislature regarding the implementation of this measure including budget recommendations, developments in federal law, guidance from the United States Department of Housing and Urban Development, and recommendations for further legislative action;
- (17) Specifying that the sum of \$159,400 is appropriated out of the Compliance Resolution Fund to carry out the purposes of this measure;
- (18) Changing the effective date of this measure to July 1, 2009; provided that sections 2, 3, 4, 6, and 7 shall take effect in July 1, 2010; and
- (19) Making technical, nonsubstantive changes for the purpose of clarity and accuracy.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1218, S.D. 2, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1218, S.D. 2, H.D. 2, C.D. 1.



Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE



ROBERT N. HERKES, Co-Chair



ROSALYN H. BAKER, Chair



BLAKE K. OSHIRO, Co-Chair



DONNA MERCADO KIM, Co-Chair



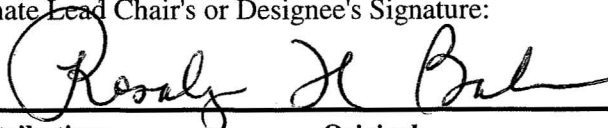

GILBERT KEITH-AGARAN, Co-Chair



Hawaii State Legislature

CR 102

Record of Votes of a
Conference Committee

Bill / Concurrent Resolution No.: SB 1218, SD 2, HD 2					Date/Time: 1:50 4-30-09				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
BAKER, Rosalyn H., Chr.	✓				HERKES, Robert N., Co-Chr.	✓			
KIM, Donna Mercado, Co-Chr.	✓				OSHIRO, Blake K., Co-Chr.	✓			
IGE, David Y.				✓	KEITH-AGARAN, Gilbert S.C., Co-Chr.	✓			
HEMMINGS, Fred	✓				MARUMOTO, Barbara C.				✓
TOTAL	3	-	-	1	TOTAL	3	-	-	1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is:					House Recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature:					House Lead Chair's or Designee's Signature:				
									
Distribution: Original					Yellow				
File with Conference Committee Report					House Clerk's Office				
					Pink				
					Senate Clerk's Office				
					Goldenrod				
					Drafting Agency				