STAND. COM. REP. NO. 267

Honolulu, Hawaii Mah 27, 2009 RE: S.B. No. 1218 S.D. 2 H.D. 1

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

Sir:

Your Committees on Consumer Protection & Commerce and Judiciary, to which was referred S.B. No. 1218, S.D. 2, entitled:

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

beg leave to report as follows:

The purpose of this bill is to protect homebuyers by replacing the Mortgage Brokers and Solicitors Law under Chapter 454, Hawaii Revised Statutes (HRS), with a new law regulating mortgage loan originators.

The Hawaii Bankers Association testified in support of this bill. The Department of Commerce and Consumer Affairs and the Hawaii Financial Services Association opposed this measure. The Legal Aid Society of Hawaii provided comments.

While this bill is the latest attempt in the last several years to reform mortgage broker regulation, there are additional considerations this time around. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) was passed in July 2008, establishing a uniform licensing and registration system for all mortgage loan originators, including mortgage brokers and loan officers. If a state does not implement laws consistent with the SAFE Act by federally established deadlines, the federal Department of Housing and Urban Development will provide the regulatory system. In light of these circumstances and the prospect of ceding regulatory authority over

SB1218 HD1 HSCR CPC-JUD HMS 2009-3338



STAND. COM. REP. NO. 1267 Page 2

mortgage brokers to federal control, your Committees continue to carefully consider the merits of this bill.

Your Committees also note that there are concerns regarding the repeal of the current mortgage broker law by this measure, because the new regulatory provisions in this bill, based on the requirements of the SAFE Act, apply only to <u>individuals</u> dealing with residential mortgage loans. It therefore appears that the SAFE Act does not preempt state laws regulating mortgage broker entities, such as corporations or partnerships, that employ mortgage loan originators, and that the repeal of the existing mortgage broker law will negatively impact consumer protections by eliminating the regulatory scheme for these mortgage broker entities.

Accordingly, your Committees have amended this bill by:

- Eliminating the provision that repeals Chapter 454, HRS, Mortgage Brokers and Solicitors, and instead exempting mortgage loan originators from that chapter;
- (2) Renaming the new chapter established by this bill, as the "Secure and Fair Enforcement for Mortgage Licensing Act;"
- (3) Removing the provisions:
  - (A) Establishing certain requirements for written agreements between mortgage loan originators and borrowers, including commitment letters and mortgage brokerage agreements;
  - (B) Prohibiting mortgage loan originators from:
    - Soliciting or arranging a residential mortgage loan at the borrower's dwelling without a prearranged appointment initiated by and at the invitation of the borrower;
    - (ii) Completing, without the borrower's consent, any portion of a residential mortgage loan application that requests material information; and
    - (iii) Completing, without the borrower's consent, any portion of an instrument evidencing or



STAND. COM. REP. NO. 1267 Page 3

securing a residential mortgage loan, which portion relates to the amount, interest rate, or monthly payment of the loan;

and

- (C) Establishing enhanced monetary penalties for violations of the new mortgage loan originator law involving conduct directed at elders;
- (4) Providing that it is a prohibited act for a mortgage loan originator to cause or require a borrower to obtain property insurance coverage in an amount exceeding the replacement cost of the improvements as established by the property insurer, rather than the property owner;
- (5) Providing the following fees for mortgage loan originators:
  - (A) \$250 for the license application fee;
  - (B) \$175 for the initial license fee;
  - (C) \$325 for the annual license renewal fee; and
  - (D) \$100 for a mortgage broker surcharge to establish regulatory practices for residential mortgage lending;

and

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

As affirmed by the records of votes of the members of your Committees on Consumer Protection & Commerce and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1218, S.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1218, S.D. 2, H.D. 1, and be referred to the Committee on Finance.



STAND. COM. REP. NO. 1267 Page 4

Respectfully submitted on behalf of the members of the Committees on Consumer Protection & Commerce and Judiciary,

VII IA

JON RIKI KARAMATSU, Chair

ROBERT N. HERKES, Chair



## HSGR 1267

#### State of Hawaii House of Representatives The Twenty-fifth Legislature

### **Record of Votes of the Committee on Consumer Protection & Commerce**

Bill/Resolution No.: (B) (D) Committee Referral: (PC/JU), FIN Date: 3/23/09								
□ The committee is reconsidering its previous decision	n on the measure.		,					
The recommendation is to: <ul> <li>Pass, unamended (as is)</li> <li>Pass, with amendments (HD)</li> <li>Hold</li> <li>Pass short form bill with HD to recommit for future public hearing (recommit)</li> </ul>								
CPC Members	Ayes	Ayes (WR)	Nays	Excused				
1. HERKES, Robert N. (C)								
2. WAKAI, Glenn (VC)	~/							
3. BELATTI, Della Au								
4. CABANILLA, Rida								
5. CARROLL, Mele								
6. ITO, Ken								
7. KARAMATSU, Jon Riki								
8. LUKE, Sylvia				<u> </u>				
9. McKELVEY, Angus L.K.								
10. MIZUNO, John M.			n a brandska se i ha konstanti na mara se s					
11. MORITA, Hermina M.			lease close it gives					
12. SOUKI, Joseph M.								
13. TSUJI, Clift	V							
14. MARUMOTO, Barbara C.								
15. THIELEN, Cynthia								
			****					
	А	0						
TOTAL (15)	1	2	$\varphi$	4				
The recommendation is: Adopted If joint referral, did not support recommendation.								
Vice Chair's or designee's signature:								
Distribution: Original (White) – Committee Duplicate Yellow) – Chief Clerk's Office Duplicate (Pink) – HMSO								

# HSCP 1267

### State of Hawaii House of Representatives The Twenty-fifth Legislature

,

### **Record of Votes of the Committee on Judiciary**

Bill/Resolution No.:	Committee Referral: CPC IJUD, FIN Date: 3/23/09					
SB1218, SP2		•		010001	l	
The committee is reconsidering its prev						
	unamended (a short form bill		ss, with amendments mmit for future publi			
JUD Members		Ayes	Ayes (WR)	Nays	Excused	
1. KARAMATSU, Jon Riki (C)		V				
2. ITO, Ken (VC)						
3. BELATTI, Della Au		$\sim$				
4. CABANILLA, Rida						
5. CARROLL, Mele						
6. HERKES, Robert N.		V			-	
7. LUKE, Sylvia		V				
8. McKELVEY, Angus L.K.						
9. MIZUNO, John M.		V		NEW YORK		
10. MORITA, Hermina M.						
11. OSHIRO, Blake K.		~				
12. SOUKI, Joseph M.						
13. TSUJI, Clift		V,				
14. WAKAI, Glenn						
15. MARUMOTO, Barbara C.						
16. THIELEN, Cynthia			V			
		and the second se				
·		and the second				
<b>TOTAL</b> (16)		9	2		5	
The recommendation is: Adop If joint r	eferral,	I Not Adop	did not suppo	rt recommendatior	<b>).</b>	
Vice Chair's or designee's signature:	F	. 14	ĥ			
<b>Distribution:</b> Original (White) – Commit	ttee Dup	licate (Yellow)	- Chief Clerk's Office	Duplicate (P	rink) – HMSO	