

STAND. COM. REP. NO.

3092

Honolulu, Hawaii

MAR 30 2012

RE: S.C.R. No. 39  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which  
was referred S.C.R. No. 39 entitled:

"SENATE CONCURRENT RESOLUTION DIRECTING THE ATTORNEY GENERAL  
OF THE STATE OF HAWAII TO INVESTIGATE CASES WHERE FRAUDULENT  
TRANSFERS AND ASSIGNMENTS OF MORTGAGE LOAN DOCUMENTS ARE  
ALLEGED,"

begs leave to report as follows:

The purpose and intent of this measure is to direct the  
Attorney General to investigate cases where fraudulent transfers  
and assignments of mortgage loan documents are alleged and to take  
action so that any financial settlement reached with mortgage  
servicers appropriately compensates and reflects the extent of the  
negative impact on all victims of the fraud.

Your Committee received testimony in support of this measure  
from eight individuals. Your Committee received comments on this  
measure from the Department of the Attorney General.

Your Committee finds that federal agencies, including the  
United States Department of Justice and the United States  
Department of Housing and Urban Development, and the fifty state  
attorneys general have been actively and jointly investigating  
wrongful conduct by lenders and servicers. Your Committee further  
finds that this joint multistate investigation has recently  
resulted in a settlement with the United States Department of  
Justice, the United States Department of Housing and Urban  
Development, forty-nine state attorneys general, the District of



Columbia, and the nation's five largest lenders and servicers. The mortgage servicing settlement addresses certain mortgage loan servicing and foreclosure abuses, and is the largest federal-state civil settlement ever obtained.

According to testimony received from the Attorney General, the settlement provides certain limited releases to the settling servicers, which could conflict with some of the investigative and enforcement actions contemplated by this measure. However, your Committee notes that the settlement does not release individual consumer's claims or defenses, claims against any third party vendors, or any criminal liability. The settlement also requires mortgage servicers to provide documentation of the note, holder status, and chain of assignment in the mortgage process. Five separate consent judgments have also been filed. These judgments are fully enforceable in federal court and servicers face significant monetary penalties for failure to comply with the settlement terms.

Your Committee also notes that due to the interest in this agreement, the United States Department of Justice has released documents pertaining to the mortgage servicing settlement. The documents are accessible on the United States Department of Justice's website, available at [http://www.justice.gov/opa/opa\\_mortgage-service.htm](http://www.justice.gov/opa/opa_mortgage-service.htm).

Your Committee concludes that in light of the recent mortgage servicing settlement, certain amendments to this measure are necessary.

Accordingly, your Committee has amended this measure by:

- (1) Adding language that more accurately reflects the results of the joint multistate investigation and recent mortgage servicing settlement;
- (2) Adding language that is more appropriate for this type of measure, by requesting the Attorney General to continue collaborating with appropriate state and federal agencies, investigate instances of wrongful and unlawful conduct by lenders and servicers, and take appropriate action, rather than directing the Attorney General to take certain actions;
- (3) Amending the title and other findings for accuracy; and



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- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee concurs with the intent and purpose of S.C.R. No. 39, as amended herein, and recommends that it be referred to the Committee on Judiciary and Labor, in the form attached hereto as S.C.R. No. 39, S.D. 1.

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

  
ROSALYN H. BAKER, Chair



The Senate  
Twenty-Sixth Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Commerce and Consumer Protection**  
**CPN**

Bill / Resolution No.:* <b>SCR 39</b>	Committee Referral: <b>CPN, JDL</b>	Date: <b>3-13-12</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> Pass, unamended 2312</div> <div style="text-align: center;"><input checked="" type="checkbox"/> Pass, with amendments 2311</div> <div style="text-align: center;"><input type="checkbox"/> Hold 2310</div> <div style="text-align: center;"><input type="checkbox"/> Recommit 2313</div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
GALUTERIA, Brickwood				✓
GREEN, M.D., Josh	✓			
NISHIHARA, Clarence K.	✓			
SOLOMON, Malama	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>2</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>Original File with Committee Report</span> <span>Yellow Clerk's Office</span> <span>Pink Drafting Agency</span> <span>Goldenrod Committee File Copy</span> </div>				

\*Only one measure per Record of Votes