

S.B. NO. 2771

JAN 24 2018

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**A BILL FOR AN ACT**

RELATING TO MORTGAGE SERVICERS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 454M, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§454M- Enforcement authorities. (a) If the  
5 commissioner has reason to believe that a person has violated or  
6 is violating section 454M-2, the commissioner may issue orders  
7 or directives under this chapter as follows:

8           (1) Order or direct persons subject to this chapter to  
9           cease and desist from conducting business, including  
10           immediate temporary orders to cease and desist;

11           (2) Order or direct persons subject to this chapter to  
12           cease any harmful activities or violations of this  
13           chapter, including immediate temporary orders to cease  
14           and desist;

15           (3) Enter immediate temporary orders to cease doing  
16           business under a license issued pursuant to the  
17           authority granted under this chapter if the

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1           commissioner determines that the license was  
2           erroneously granted or the licensee or any person  
3           subject to this chapter is currently in violation of  
4           this chapter; or

5           (4) Order or direct any other affirmative action as the  
6           commissioner deems necessary.

7           (b) An order to cease and desist becomes effective upon  
8           service of the order upon the person.

9           (c) An order to cease and desist remains effective and  
10          enforceable pending the completion of an administrative  
11          proceeding pursuant to chapter 91.

12          (d) The commissioner shall commence an administrative  
13          proceeding within twenty days after issuing an order to cease  
14          and desist."

15          SECTION 2. Section 454M-4, Hawaii Revised Statutes, is  
16          amended by amending subsection (c) to read as follows:

17          "(c) [~~For~~] For the purpose and to the extent reasonably  
18          necessary to [participate in] use NMLS, the commissioner may  
19          modify, in whole or in part, by rule or order, any or all of the  
20          requirements of [subsections (e) and (i).] this chapter and  
21          establish new requirements."

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1 SECTION 3. Section 454M-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[f]~~§454M-7~~[+]~~ **License sanctions; [~~suspension, revocation,~~**  
4 ~~denial, condition, and refusal to renew, reinstate, or restore.]~~  
5 **cease and desist and other orders.** (a) In addition to any  
6 other actions authorized by law, the commissioner may suspend,  
7 revoke, deny, condition in any manner, or refuse to renew,  
8 reinstate, or restore, any license issued under this chapter, or  
9 fine any person holding a license issued under this chapter, for  
10 any violation of this chapter. All such orders shall be made  
11 pursuant to chapter 91~~[+]~~, except as provided by section 454M-  
12 or another provision of this chapter.

13 (b) If the commissioner determines a violation of this  
14 chapter or a rule adopted or an order issued under this chapter  
15 by a licensee is likely to cause immediate and irreparable harm  
16 to the licensee, the licensee's customers, or the public as a  
17 result of the violation or is likely to cause insolvency or  
18 significant dissipation of assets of the licensee, then the  
19 commissioner may issue an order requiring the licensee to cease  
20 and desist from the violation. The order becomes effective upon  
21 service of the order upon the licensee.

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1        (c) The commissioner may enter into a consent order at any  
2 time with a person to resolve a matter arising under this  
3 chapter. A consent order shall be signed by the person to whom  
4 the order is issued or by the person's authorized  
5 representative, and shall indicate agreement with the terms  
6 contained in the order. A consent order may provide that it  
7 does not constitute an admission by a person that this chapter  
8 or a rule adopted or an order issued under this chapter has been  
9 violated."

10        SECTION 4. Section 454M-8, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        "**§454M-8 Powers of commissioner.** In addition to any other  
13 acts or conditions provided by law, the commissioner may:

- 14        (1) Adopt, amend, or repeal rules, issue declaratory  
15            rulings or informal nonbinding interpretations, and  
16            investigate and act upon written consumer complaints;
- 17        (2) Grant, deny, forfeit, renew, reinstate, or restore the  
18            license of any mortgage servicer;
- 19        (3) Revoke, suspend, or otherwise limit the license of any  
20            mortgage servicer for any violation of the provisions  
21            in this chapter, or any rule or order of, or agreement  
22            with the commissioner;

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- 1        (4) Issue orders to cease and desist, and enter into  
2        consent orders;
- 3        [~~(4)~~] (5) Report any violation of this chapter or  
4        violation of federal or state law to the Consumer  
5        Financial Protection Bureau or other federal agency  
6        having jurisdiction over the licensee;
- 7        [~~(5)~~] (6) Investigate and conduct hearings regarding any  
8        violation of this chapter, or any rule or order of or  
9        agreement with the commissioner; and
- 10       [~~(6)~~] (7) Do any and all things necessary or incidental to  
11       the exercise of the commissioner's power and duties,  
12       including the authority to conduct contested case  
13       proceedings under chapter 91."

14       SECTION 5. Section 454M-10, Hawaii Revised Statutes, is  
15       amended to read as follows:

16       "**§454M-10 Penalty.** Any person who violates any provision  
17       of this chapter, rule adopted or order issued pursuant to this  
18       chapter, or agreement with the commissioner may be subject to an  
19       administrative fine of not more than \$7,000 for each violation;  
20       provided that if the aggregate fine amount exceeds \$7,000,  
21       \$1,000 of the aggregate fine amount shall be deposited into the

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1 mortgage foreclosure dispute resolution special fund established  
2 pursuant to section 667-86."

3 SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: *Wms. W.*

BY REQUEST

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**Report Title:**

Mortgage Servicers; Commissioner of Financial Institutions; Unlicensed Persons; Cease and Desist; Consent Order; Chapter 91; Administrative Proceeding; Rules; NMLS; Violation

**Description:**

Augments the Commissioner of Financial Institutions ability to adapt chapter 454M, Hawaii Revised Statutes, requirements as reasonably necessary to use in NMLS. Authorizes the commissioner to enter into consent orders, and to issue cease and desist orders for chapter violations by licensees and unlicensed persons.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

# SB. NO. 2171

## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE SERVICERS.

PURPOSE: To give the Commissioner of Financial Institutions (Commissioner) authority to adapt chapter requirements or other requirements reasonably necessary to use in NMLS, the nationwide licensing system; and to authorize the Commissioner to issue cease and desist orders against licensees and unlicensed persons to quickly stop harmful activity, and enter into consent orders.

MEANS: Add a new section to chapter 454M and amend sections 454M-7, 454M-8, and 454M-10, Hawaii Revised Statutes.

JUSTIFICATION: Section 454M-4(c) as amended by this bill allows the Commissioner to modify certain requirements, pertaining to applications and license surrender, to participate in NMLS. Augmented authority is needed to implement NMLS changes as the system advances. An example is NMLS' introduction of electronic bond acceptance for security required of licensees. Authorizing the Commissioner to issue cease and desist orders will enable swift action to be taken to minimize consumer harm inflicted by persons in violation of chapter 454M. Authority to issue consent orders will expedite decisions and save resources.

Impact on the public: NMLS updates will save time for applicants and licensees, and increase their ease of use of the system. Authorizing the Commissioner to issue cease and desist orders will improve consumer protection, and consent orders will expedite decisions and save the parties resources.

Impact on the department and other agencies:  
Implementing NMLS updates will enable staff to be more efficient and better serve the public. Authorizing the Commissioner to issue cease and desist orders will enable the Commissioner to act more quickly against chapter 454M violators, and potentially reduce legal fees incurred to stop harmful activity. Consent orders will expedite decisions and save the parties resources.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.