

JAN 23 2025

A BILL FOR AN ACT

RELATING TO INTEREST ON INSURANCE PROCEEDS RELATED TO A MORTGAGE LOAN.

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

1 SECTION 1. Chapter 412, Hawaii Revised Statutes, is
2 amended by adding to article 14 a new section to be
3 appropriately designated and to read as follows:

4 "§412:14- Interest on insurance proceeds related to a
5 mortgage loan. (a) A Hawaii financial institution shall comply
6 with the following requirements concerning the handling,
7 processing, and disbursement of insurance proceeds paid to
8 satisfy a claim associated with the damage or destruction of a
9 residential property that is the subject of a mortgage,
10 including but not limited to hazard insurance of any kind.

11 (1) No later than thirty days after the Hawaii financial
12 institution receives the insurance proceeds the
13 financial institution must contact the borrower to
14 determine whether or not the proceeds should be
15 applied to the unpaid principal balance of the
16 existing mortgage loan or placed in an escrow account
17 if the homeowner intends to use the insurance proceeds

S.B. NO. 1366

1 to rebuild or disburse funds in excess of the loan
2 balance.

3 (A) If the insurance proceeds are sufficient to pay
4 off the mortgage loan, then the financial
5 institution, with the borrower's consent, must
6 pay off the mortgage loan and disburse any excess
7 funds to the borrower; or

8 (B) If the funds are not sufficient to pay off the
9 mortgage loan or the borrower intends to use the
10 insurance proceeds to rebuild, the proceeds must
11 be placed in an escrow account as set forth in
12 paragraph (2).

13 (C) In accordance with investor guidelines, if the
14 funds exceed the amount of the mortgage loan
15 balance, a mortgage servicer shall disburse to a
16 borrower any amount of insurance proceeds in
17 excess of the remaining amount that the borrower
18 owes on the mortgage.

19 (2) A Hawaii financial institution shall hold in an
20 interest-bearing account, for the benefit of the
21 borrower, any insurance proceeds that the financial
22 institution does not immediately disburse to a

S.B. NO. 1366

1 borrower pending rebuild of a residential property.

2 Such an account must generate interest at a rate that

3 is not less than the national rate for money market

4 accounts, as determined according to title 12 Code of

5 Federal Regulations section 337.7. The financial

6 institution shall ensure that the interest that

7 accrues to the account is credited to the borrower's

8 account monthly.

9 (3) A financial institution shall not charge the borrower

10 a fee for the maintenance or disbursement of insurance

11 proceeds. Additionally, the financial institution

12 shall not charge the borrower a fee for the

13 maintenance or disbursement of interest earned on the

14 insurance proceeds, as set forth in paragraph (2),

15 held by the financial institution for the benefit of

16 the borrower."

17 SECTION 2. Section 454M-5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§454M-5, **Additional duties of a mortgage servicer; good**
20 **faith and fair dealing; disclosures; payments, accounting, and**
21 **records; assignment of servicing rights.** (a) A mortgage
22 servicer licensed or acting under this chapter, has a duty of

S.B. NO. 1366

1 good faith and fair dealing in its communications, transactions,
2 and course of dealings with each borrower in connection with the
3 servicing of the borrower's mortgage loan.

4 (b) In addition to any other duties imposed by law, a
5 mortgage servicer shall:

6 (1) Safeguard and account for any money handled for the
7 borrower;

8 (2) Follow reasonable and lawful instructions from the
9 borrower consistent with the underlying note and
10 mortgage;

11 (3) Act with reasonable skill, care, timeliness,
12 promptness, and diligence;

13 (4) Disclose to the commissioner in the servicer's license
14 application and each yearly renewal a complete,
15 current schedule of the ranges of costs and fees it
16 charges borrowers for its servicing-related
17 activities;

18 (5) File a report with each yearly renewal statement in a
19 form and format acceptable to the commissioner
20 detailing the servicer's activities in this State,
21 including:

S.B. NO. 1366

- 1 (A) The number of mortgage loans the servicer is
2 servicing;
- 3 (B) The type and characteristics of loans serviced in
4 this State;
- 5 (C) The number of serviced loans in default, along
6 with a breakdown of thirty-, sixty-, and ninety-
7 day delinquencies;
- 8 (D) Information on loss mitigation activities,
9 including details on workout arrangements
10 undertaken;
- 11 (E) Information on foreclosures commenced in this
12 State;
- 13 (F) The affiliations of the mortgage servicer,
14 including any lenders or mortgagees for which the
15 mortgage servicer provides service, any
16 subsidiary or parent entities of the mortgage
17 servicer, and a description of the authority held
18 by the mortgage servicer through its
19 affiliations; and
- 20 (G) Any other information that the commissioner may
21 require; and

S.B. NO. 1366

1 (6) Maintain an office in the State that is staffed by at
2 least one agent or employee for the purposes of
3 addressing consumer inquiries or complaints and
4 accepting service of process; provided that the
5 mortgage servicer's business constitutes at least a
6 twenty per cent share of the portion of the total
7 mortgage loan service market in the State that was
8 serviced by mortgage servicers licensed under this
9 chapter within the previous calendar year; and
10 provided further that nothing in this section shall
11 prohibit a mortgagee as defined by section 667-1 or a
12 mortgage servicer from contracting with a licensee
13 that maintains an office in this State in conformity
14 with this section for the purposes of addressing
15 consumer inquiries or complaints and accepting service
16 of process.

17 (c) A mortgage servicer shall comply with the following
18 requirements concerning handling and processing of mortgage
19 payments:

20 (1) Except as provided in paragraph (4), all payments
21 received by a mortgage servicer on a mortgage loan at
22 the address where the borrower has been instructed in

S.B. NO. 1366

1 writing to make payments shall be accepted and
2 credited, or treated as credited, on the business day
3 received, to the extent that the borrower has provided
4 sufficient information to credit the account. For all
5 mortgage loans originated after July 1, 2015, except
6 where inconsistent with federal law or regulation,
7 payments shall be credited to the principal and
8 interest due on the home loan before crediting the
9 payments to taxes, insurance, or fees;

10 (2) Methods of payment and payment instruments shall be
11 reasonable;

12 (3) If a mortgage servicer specifies in writing
13 requirements for the borrower to follow in making
14 payments, but accepts a payment that does not conform
15 to the requirements, the mortgage servicer shall
16 credit the payment as soon as commercially
17 practicable, but in no event later than three business
18 days after receipt;

19 (4) Late payments of principal and interest shall be
20 credited before any late charge is collected; and

21 (5) If the mortgage servicer receives any payment on a
22 mortgage loan and suspenses the payment, does not

S.B. NO. 1366

1 credit the payment, or does not treat the payment in
2 accordance with this section, the mortgage servicer,
3 within ten days of receipt, shall send the borrower
4 notice by mail at the borrower's last known address
5 indicating the reason the payment was suspended or was
6 not credited or treated as credited to the account,
7 and specifying any actions by the borrower necessary
8 to make the loan current.

9 (d) A mortgage servicer shall comply with the following
10 requirements concerning escrows for the payment of taxes and
11 insurance:

12 (1) Any mortgage servicer who receives funds from a
13 borrower to be held in escrow for payment of taxes and
14 insurance premiums shall pay the taxes and insurance
15 premiums of the borrower to the appropriate taxing
16 authority and insurance company in the amount required
17 and at the time the taxes and insurance premiums are
18 due, in accordance with the requirements of the Real
19 Estate Settlement Procedures Act, including title 12
20 C.F.R. section 1024.17, and shall be liable to the
21 borrower as provided therein;

S.B. NO. 1366

- 1 (2) If the amount held in the escrow account as of the
2 date the taxes and insurance premiums are due is
3 insufficient to pay the taxes and insurance premiums,
4 the mortgage servicer shall pay the taxes and
5 insurance premiums from the mortgage servicer's own
6 funds; provided that the borrower has paid to the
7 mortgage servicer the amounts required to be paid into
8 the escrow account, as determined by the mortgage
9 servicer, for all amounts scheduled to be paid to the
10 mortgage servicer prior to the date the taxes and
11 insurance premiums are due; and
- 12 (3) Where an escrow account has been established and a
13 mortgage servicer advances funds in paying a
14 disbursement that is not the result of a borrower's
15 payment default under the underlying mortgage
16 document, the mortgage servicer shall conduct an
17 escrow account analysis to determine the reasons for
18 and extent of the deficiency and shall provide a
19 written explanation to the borrower before seeking
20 repayment of the funds from the borrower. The
21 mortgage servicer shall then give the borrower the
22 option of paying the shortage over a period of not

S.B. NO. 1366

1 less than one year. The mortgage servicer shall not
2 charge or collect interest on any shortage during the
3 payment period.

4 Any mortgage servicer who violates any provision of this
5 subsection shall be liable to the borrower: for any penalties,
6 interest, or other charges levied by the taxing authority or
7 insurance company as a result of any violation; any actual
8 damages suffered by the borrower as a result of the violation,
9 including any amount that would have been paid by an insurer for
10 a casualty or liability claim had the insurance policy not been
11 canceled for nonpayment by the mortgage servicer; and, in the
12 case of any successful action to enforce the foregoing
13 liability, the costs of the action together with reasonable
14 attorney's fees as determined by the court.

15 (e) A mortgage servicer shall comply with the following
16 requirements concerning the handling, processing, and
17 disbursement of insurance proceeds paid to satisfy a claim
18 associated with the damage or destruction of a residential
19 property that is the subject of a mortgage, including but not
20 limited to hazard insurance of any kind.

21 (1) No later than thirty days after the mortgage servicer
22 receives the insurance proceeds a mortgage servicer

S.B. NO. 1366

1 must contact the borrower to determine whether or not
2 the proceeds should be applied to the unpaid principal
3 balance of the existing mortgage loan or placed in an
4 escrow account if the homeowner intends to use the
5 insurance proceeds to rebuild or disburse funds in
6 excess of the loan balance.

7 (A) If the insurance proceeds are sufficient to pay
8 off the mortgage loan, then the servicer, with
9 the borrower's consent, must pay off the mortgage
10 loan and disburse any excess funds to the
11 borrower; or

12 (B) If the funds are not sufficient to pay off the
13 mortgage loan or the borrower intends to use the
14 insurance proceeds to rebuild, the proceeds must
15 be placed in an escrow account in accordance to
16 paragraph (2); and

17 (C) In accordance with investor guidelines, if the
18 funds exceed the amount of the mortgage loan
19 balance, a mortgage servicer shall disburse to a
20 borrower any amount of insurance proceeds in
21 excess of the remaining amount that the borrower
22 owes on the mortgage.

S.B. NO. 1366

1 (2) A mortgage servicer shall hold in an interest-bearing
2 account, for the benefit of the borrower, any
3 insurance proceeds that the mortgage servicer does not
4 immediately disburse to a borrower pending rebuild of
5 a residential property. Such an account must generate
6 interest at a rate that is not less than the national
7 rate for money market accounts, as determined
8 according to title 12 C.F.R. section 337.7. A
9 mortgage servicer shall ensure that the interest that
10 accrues to the account is credited to the borrower's
11 account monthly.

12 (3) A mortgage servicer shall not charge the borrower a
13 fee for the maintenance or disbursement of insurance
14 proceeds. Additionally, the mortgage servicer shall
15 not charge the borrower a fee for the maintenance or
16 disbursement of interest earned from an interest-
17 bearing account established pursuant to section 454M:-
18 5(e)(2).

19 ~~(e)~~ (f) A mortgage servicer shall comply with the
20 following requirements concerning statements of account:

21 (1) At least once annually, within thirty days of the end
22 of the computation year, a mortgage servicer shall

S.B. NO. 1366

1 deliver to the borrower a plain language statement of
2 the borrower's account showing the unpaid principal
3 balance of the mortgage loan at the end of the
4 immediately preceding twelve-month period, the
5 interest paid during that period, and the amounts
6 deposited into escrow and disbursed from escrow during
7 the period. The annual escrow statement may be
8 provided separately from the annual statement showing
9 the unpaid principal and interest paid. The format
10 and content of the annual escrow statement shall
11 comply with the Real Estate Settlement Procedures Act,
12 including title 12 C.F.R. section 1024.17;

13 (2) A mortgage servicer shall promptly provide a borrower
14 with an accurate accounting in plain English of the
15 debt owed when requested by the borrower or borrower's
16 authorized representative. Within thirty days of
17 receipt of a request from the borrower or the
18 borrower's authorized representative, a mortgage
19 servicer shall deliver to the borrower a payment
20 history for the last thirty-six months of the
21 borrower's account, unless a different period is
22 requested, showing the date and amount of all payments

S.B. NO. 1366

1 made or credited to the account and the total unpaid
2 balance. The mortgage servicer shall have sixty days
3 to deliver a payment history where the request is for
4 a period longer than the last thirty-six months;

5 (3) A fee shall not be charged to the borrower for the
6 annual escrow statement or for one payment history
7 furnished to a borrower in a twelve-month period; and

8 (4) A shortage, surplus, or deficiency in the escrow
9 account shall be handled in accordance with the Real
10 Estate Settlement Procedures Act, including title 12
11 C.F.R. section 1024.17. Alternatively, with the
12 consent of the borrower, an excess balance may be
13 applied to the principal balance.

14 [~~(f)~~] (g) Except where inconsistent with the automatic
15 stay provisions of the Bankruptcy Code with respect to a
16 borrower in a pending bankruptcy proceeding, a mortgage servicer
17 shall send a payment reminder notice to a borrower at the
18 borrower's last known address no later than seventeen days after
19 the payment becomes due and remains unpaid; provided that a
20 mortgage servicer is not required to send a separate payment
21 reminder notice for each consecutive month in which the mortgage
22 loan continues to remain unpaid

S.B. NO. 1366

1 ~~(g)~~ (h) A mortgage servicer shall provide a clear,
2 understandable, and accurate statement of the total amount that
3 is required to pay off the mortgage loan as of a specified date,
4 within a reasonable time, but in any event no more than five
5 business days after receipt of a request from the borrower or
6 borrower's authorized representative. No borrower shall be
7 charged a fee for being informed or receiving a payoff statement
8 or for being provided with a release upon full prepayment;
9 provided that a mortgage servicer may charge a reasonable fee
10 for providing a payoff statement after five or more requests in
11 any calendar year.

12 ~~(h)~~ (i) A mortgage servicer shall comply with the
13 following requirements concerning handling consumer complaints
14 and inquiries:

15 (1) A mortgage servicer shall follow the requirements of
16 the Real Estate Settlement Procedures Act, including
17 requests for error and information resolution
18 procedures under title 12 C.F.R. sections 1024.35 and
19 1024.36;

20 (2) In addition to the requirements of the Real Estate
21 Settlement Procedures Act, a mortgage servicer shall
22 establish and maintain a system to respond to and

S.B. NO. 1366

1 resolve borrower inquiries and complaints in a prompt
2 and appropriate manner;

3 (3) Within ten business days of receiving a request in
4 writing from a borrower or the borrower's authorized
5 representative, a mortgage servicer shall provide the
6 borrower with the name, address, phone number, or
7 electronic mail address, if available, and other
8 relevant contact information for the owner or assignee
9 of the mortgage loan; and

10 (4) In addition to the information required to be
11 disclosed under this section, a mortgage servicer may,
12 at its option, provide any other information regarding
13 the servicing of the loan that the mortgage servicer
14 believes would be helpful to a borrower; provided that
15 any additional information does not contradict or
16 obscure the required disclosures.

17 [~~(i)~~] (j) A mortgage servicer shall comply with the
18 following requirements concerning fees:

19 (1) A mortgage servicer shall maintain and keep current a
20 schedule of standard or common fees that the mortgage
21 servicer charges borrowers for the servicer's
22 servicing-related activities, such as nonsufficient

S.B. NO. 1366

1 fund fees. The schedule shall identify each fee,
2 provide a plain English explanation of the fee, and
3 state the amount of the fee or range of amounts. If
4 there is no standard fee, the schedule shall explain
5 how the fee is calculated or determined. A mortgage
6 servicer shall make its schedule available on the
7 mortgage servicer's website and to the borrower or the
8 borrower's authorized representative upon request;

9 (2) A mortgage servicer may only collect a fee if the fee
10 is for services actually rendered and one of the
11 following conditions is met:

12 (A) The fee is clearly and conspicuously disclosed by
13 the loan instruments and not prohibited by law;

14 (B) The fee is expressly permitted by law and not
15 prohibited by the loan instruments; or

16 (C) The fee is not prohibited by law or the loan
17 instruments and is a reasonable fee for a
18 specific service requested by the borrower that
19 is assessed only after clear and conspicuous
20 disclosure of the fee is provided to the borrower
21 and the borrower expressly consents to pay the
22 fee in exchange for the services;

S.B. NO. 1366

1 (3) In addition to the limitations in paragraph (2),
2 attorneys' fees charged in connection with a
3 foreclosure action shall not exceed reasonable and
4 customary fees for the work. If a foreclosure action
5 or proceeding is terminated prior to the public sale
6 because of a loss mitigation option, a reinstatement,
7 or payment in full, the borrower shall only be liable
8 for reasonable and customary fees for work actually
9 performed; and

10 (4) A mortgage servicer shall not impose any late fee or
11 delinquency charge when the only delinquency is
12 attributable to late fees or delinquency charges
13 assessed on an earlier payment and the payment is
14 otherwise a full payment for the applicable period and
15 is paid on its due date or within any applicable grace
16 period. Late charges shall not be:

17 (A) Based on an amount greater than the past due
18 amount;

19 (B) Collected from the escrow account or from escrow
20 surplus without the approval of the borrower; or

21 (C) Deducted from any regular payment.

S.B. NO. 1366

1 ~~[(j)]~~ (k) Each mortgage servicer licensee shall maintain
2 adequate records of each residential mortgage loan transaction
3 at the office named in the mortgage servicer license for seven
4 years.

5 ~~[(k)]~~ (l) Upon assignment of servicing rights on a
6 residential mortgage loan, the mortgage servicer shall disclose
7 to the borrower:

8 (1) Any notice required by the Real Estate Settlement
9 Procedures Act, including title 12 C.F.R. section
10 1024.33, within the time periods prescribed therein;
11 and

12 (2) A schedule of the ranges and categories of the
13 mortgage servicer's costs and fees for the servicer's
14 servicing-related activities, which shall comply with
15 state and federal law and, if the disclosure is made
16 by a mortgage servicer licensee, shall not exceed
17 those reported to the commissioner in accordance with
18 this chapter.

19 ~~[(l)]~~ (m) At the time a servicer accepts assignment of
20 servicing rights for a mortgage loan, the servicer shall
21 disclose to the borrower all of the following:

22 (1) Any notice required by the Real Estate Settlement

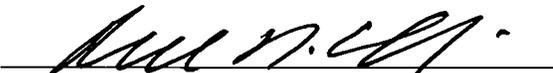
S.B. NO. 1366

- 1 Procedures Act;
- 2 (2) A schedule of the ranges and categories of its costs
3 and fees for its servicing-related activities,
4 which shall comply with this chapter and which shall
5 not exceed those reported to the commissioner; and
- 6 (3) A notice in a form and content acceptable to the
7 commissioner that the servicer is licensed by the
8 commissioner and that complaints about the servicer
9 may be submitted to the commissioner.

10 [~~(m)~~] (n) Where this chapter requires a person to comply
11 with procedures, actions, standards, disclosures, notices,
12 format, content, or other requirements of the Real Estate
13 Settlement Procedures Act, the required compliance applies to
14 any person subject to this chapter, whether or not the Real
15 Estate Settlement Procedures Act applies to that person or
16 transaction."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act, upon its approval, shall take effect
20 on July 1, 2025.

21 INTRODUCED BY: 

22 BY REQUEST

S.B. NO. 1366

Report Title:

Interest on Insurance Proceeds; Mortgage Loans; Mortgage Servicers Financial Institutions

Description:

Supports mortgagors during disasters and other instances of damage to property by requiring licensed mortgage servicers and financial institutions to pay interest on insurance proceeds held for the benefit of consumers. Provides that a fee shall not be charged to the borrower in connection with the maintenance or disbursement of insurance proceeds received by the financial institution. Provides that the minimum interest rate paid on insurance proceeds be based on the national rate for money market accounts, as determined according to title 12 C.F.R. section 337.7 and will be credited to the borrower monthly.

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. 1366

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INTEREST ON INSURANCE PROCEEDS RELATED TO A MORTGAGE LOAN.

PURPOSE: To support mortgagors during disasters and other instances of damage to property by requiring licensed mortgage servicers and financial institutions to pay interest on insurance proceeds held in escrow for the benefit of consumers; and provide that a fee shall not be charged to the borrower in connection with the maintenance or disbursement of insurance proceeds received by the financial institution. The minimum interest rate paid on insurance proceeds will be based on the national rate for money market accounts, as determined according to title 12 C.F.R. section 337.7 and will be credited to the borrower monthly.

MEANS: Add a new section to article 14 of chapter 412, and amend section 454M-5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The August 8, 2023, wildfires in the counties of Hawaii and Maui caused extensive loss of life and damage. Destruction of infrastructure has hindered victims' ability to rebuild, leaving insurance proceeds sitting in escrow accounts until the rebuilding process is possible. Local banks have been offering interest on the insurance proceeds, but it is not required by law, and consumers with out-of-state mortgage servicers and banks have not been offered the same because current laws do not require insurance proceeds to be held in interest-bearing accounts. This bill will increase consumer protection in cases of damage or destruction to a mortgagor's property by requiring that all licensed Hawaii mortgage servicers and financial institutions contact

the consumer and provide them with an option of putting their insurance proceeds in an interest-bearing account.

Impact on the public: This bill will increase consumer protection by requiring that financial institutions and mortgage servicers contact the consumer in the event of damage and the receiving of insurance proceeds to provide options within thirty days.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-104.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2025.