

Honolulu, Hawaii

FEB 18 2015

RE: S.B. No. 1262
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 1262 entitled:

"A BILL FOR AN ACT RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the Secure and Fair Enforcement for Mortgage Licensing Act by:

- (1) Amending the definition of "sole proprietorship";
- (2) Clarifying that mortgage loan originator companies may post language specifying that members of the public may be seen by appointment during posted business hours; and
- (3) Raising the target balance of the mortgage loan recovery fund and requiring the Insurance Commissioner to adjust the assessed mortgage loan recovery fund fee once the target balance is reached.

Your Committee received testimony in support of this measure from the Hawaii Association of Mortgage Brokers and one individual. Your Committee received comments on this measure from the Division of Financial Institutions of the Department of Commerce and Consumer Affairs and Business Registration Division of the Department of Commerce and Consumer Affairs.



Your Committee finds that this measure was intended to update certain provisions in chapter 454F, Hawaii Revised Statutes, to conform to certain standards within the mortgage loan origination industry. However, your Committee has heard testimony that this measure as written may have unintended consequences.

Your Committee has heard the concerns that amending the definition of "sole proprietorship" within chapter 454F, Hawaii Revised Statutes, may cause unnecessary ambiguity and confusion in the interpretation of this chapter. Your Committee notes that the existing definition of "sole proprietorship" makes it clear that a single owner/operator legal entity, such as a corporation or limited liability company, is not eligible for the "sole proprietorship" category of mortgage loan originator fees. This existing definition is also consistent with definitions used by the Internal Revenue Service and the United States Small Business Administration.

Your Committee has also heard the concerns that the public would be disserved by relaxing mortgage loan originator company office hour requirements. Your Committee notes that, in response to consumer complaints, chapter 454F, Hawaii Revised Statutes, was amended in 2014 to require mortgage loan originator company locations to be open for business to the public during regular posted business hours. According to the Division of Financial Institutions, even after passage of the 2014 amendments, the Division received twenty-two complaints related to consumers being unable to reach their mortgage loan originators. Your Committee concludes that in view of the risk to consumers who cannot contact their mortgage loan originator, it is not appropriate to amend mortgage loan originator company office hour requirements.

Finally, your Committee has heard testimony that this measure proposes a \$750,000 floor and a \$1,000,000 ceiling on the balance of the mortgage loan recovery fund. Your Committee understands the concerns that this does not provide flexibility in the event that the circuit court orders payouts from the fund. However, your Committee notes that the Department of the Attorney General is currently reviewing a rule drafted by the Department of Commerce and Consumer Affairs that would enable the Commissioner of Financial Institutions to exercise the authority to adjust or cease collection of fees generated by renewals when the fund reaches \$750,000. Your Committee finds that enabling the Commissioner of Financial Institutions to make a finding to adjust the assessed mortgage loan recovery fund fee is more appropriate



than setting floor and ceiling requirements on the balance of this fund.

Accordingly, your Committee has amended this measure by:

- (1) Deleting language that would have amended the definition of "sole proprietorship";
- (2) Deleting language that would have enabled mortgage loan originator companies to post language specifying that members of the public may be seen by appointment during posted business hours;
- (3) Permitting the Commissioner of Financial Institutions to make a finding to adjust the assessed mortgage loan recovery fund fee once the mortgage loan recovery fund reaches its target balance, rather than requiring the Insurance Commissioner to cease collection of fees once the mortgage loan recovery fund attains a specific funding level;
- (4) Updating the purpose section of this measure to reflect its amended purpose; and
- (5) 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 is in accord with the intent and purpose of S.B. No. 1262, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1262, S.D. 1, and be referred to the Committee on Ways and Means.

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



ROSALYN H. BAKER, Chair



