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LAWRENCE M. REIFURTH
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TO THE
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Tuesday, March 11, 2008
9:00 a.m.

TESTIMONY ON H.B. NO. 2254, H.D. 2 - RELATING TO BANKS AND FINANCIAL
INSTITUTIONS

THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nick Griffin, Commissioner of Financial Institutions, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on House Bill No. 2254, H.D. 2. The Department supports this bill relating to banks and financial institutions.

The purpose of this bill is to prohibit the deceptive use of the name or trademark of a financial institution or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without written

permission and in a manner that would lead a reasonable person to believe that the material or solicitation originated from a financial institution or its affiliates or subsidiaries. The bill further authorizes a civil penalty of up to \$10,000 for each violation.

This measure appears to be consistent with the intent of Section 412:1-104, Hawaii Revised Statutes ("HRS"), which prohibits a person from using certain restricted terms, including "financial institution" and "bank", among others, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name, unless the person is authorized to engage in business as a financial institution in this State. What Section 412:1-104, HRS, and this measure would appear to have in common is the concern that the general public not be misled by any person who falsely suggests or implies that it is a financial institution of the character indicated by the name. This measure appears to extend this idea a step further by expressly prohibiting a person from using the name or trademark of a financial institution or its affiliates or subsidiaries when marketing or soliciting customers without that financial institution's written consent to do so when a reasonable person would be led to believe that the marketing material or solicitation either originated from, was endorsed by, is related to, or is the responsibility of the named financial institution, or its affiliates or subsidiaries. As such, the measure would appear to be helpful in protecting the general public from additional deceptive marketing practices, beyond

those expressly described in Section 412:1-104, HRS, and related to the name or trademark of financial institutions as defined in Section 412:1-109, HRS, as well as the affiliates and subsidiaries of such financial institutions.

We note that Section 412:2-109, HRS, already provides that "fees and fines collected by the commissioner of financial institutions shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)." That provision effectively addresses the use and application of any funds collected as a civil penalty under this measure.

We point out to your committee that the subject matter of the bill may be somewhat duplicative in stating that this measure relates to both banks and financial institutions.

The Department supports this measure and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.



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March 10, 2008

The Honorable Russell S. Kokubun, Chair
Senate Committee on Commerce, Consumer
Protection, and Affordable Housing
State Capitol, Room 229
Honolulu, HI 96813

Chair Kokubun and members of the Committee:

H.B. No. 2254, H.D.2, *Relating to Banks and Financial Institutions*

My name is Mike Leach, Legislative & Regulatory Manager for the Hawaii Credit Union League (HCUL). I am testifying on behalf of HCUL as the local trade association for Hawaii's 93 federally and state-chartered credit unions to support the general intent of H.B. No. 2254, H.D. 2.

This bill seeks to provide greater protection to Hawaii consumers by prohibiting deceptive practices in the use of the name or trademark of a financial institution, its affiliates and subsidiaries, and by establishing a fine of up to \$10,000 for each violation.

Thank you for the opportunity to ask for your favorable consideration of this measure.

Sincerely,

Michael Leach
Legislative & Regulatory Manager

cc: Dennis K. Tanimoto, President



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

March 10, 2008

The Honorable Russell Kokubun, Chair
and Members of the Senate Committee on
Commerce, Consumer Protection and
Affordable Housing
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: House Bill 2254, HD 2 Relating to Banks and Financial Institutions

Dear Chair Kokubun and members of the Senate Committee on Commerce, Consumer Protection, and Affordable Housing:

I am Rick Tsujimura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

We support this measure and urge its passage.

Thank you for the opportunity to present this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

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March 11, 2008

Sen. Russell S. Kokubun, Chair,
and members of the Senate Committee on Commerce, Consumer Protection, and
Affordable Housing
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2254, House Draft 2 (Banks and Financial Institutions)**
Hearing Date/Time: Tuesday, March 11, 2008, 9:00 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies.

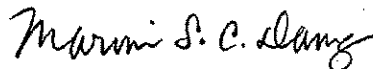
The purpose of this Bill is to prohibit the deceptive use of the name or trademark of a financial institution or its affiliates or subsidiaries, and to establish a civil penalty of up to \$10,000 for each violation.

The HFSA **strongly supports** this Bill. This Bill is necessary to prevent the all too common situation where mortgage loan customers of Hawaii financial services loan companies are deceived by mail solicitations by mainland lenders regarding refinancing that make reference to the name of the Hawaii financial services loan company to wrongly suggest that the Hawaii financial services loan company is the solicitor when in fact it is not. The name of the mainland lender does not appear in the solicitation letter or is in obscure fine print.

This Bill will require that any use of the name or trademark of a financial institution or its affiliates or subsidiaries shall be by written consent by the financial institution or its affiliates or subsidiaries, thereby ensuring the appropriate use of the name or trademark while protecting Hawaii consumers from replying to solicitations under deceptive practices.

The "defective" effective date should be changed so this Bill will take effect on approval.

Thank you for considering this testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

Members: American General Financial Services of Hawaii, Inc./American International Group • Beneficial Hawaii, Inc./HSBC North America • CitiFinancial, Inc./Citigroup • House of Finance, Inc. • Kauai Island Finance, Inc. • Maui Industrial Loan & Finance Company, Inc. • Safety Loan Company, Ltd. • Wells Fargo Financial Hawaii, Inc./Wells Fargo Financial, Inc.



HAWAII BANKERS ASSOCIATION

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March 7, 2008

The Honorable Russell Kokubun
Chair, Committee on Commerce, Consumer Protection
and Affordable Housing
Hawaii State Senate

Sent via email: testimony@Capitol.hawaii.gov

Re: HB 2254, HD 2 Relating to Banks and Financial Institutions **(In Support)**

Dear Chairs Kokubun:

I am Roy Amemiya employed by Central Pacific Bank, but testifying on behalf of the Hawaii Bankers Association (HBA) and its member banks.

The HBA supports HB 2254, HD 2. The measure prohibits the deceptive use of the name or trademark of a financial institution or its affiliates or subsidiaries, and establishes a fine of \$10,000 for violations.

With increasing frequency, out-of-state lenders are sending direct mail solicitations for refinance opportunities that prominently list the existing lender in a manner that the recipient is led to erroneously believe that their lender is sending an important notice. The solicitations contain phrases like "Time Sensitive Material" and "Payment Reduction Notice" that make the recipient more apt to read the material. Only after carefully reading the literature or calling the phone number is it apparent that this is a refinance solicitation from a different lender.

While existing contract law is intended to stop deceptive trade practices, proving damages becomes problematic. The fine of \$10,000 for violators provides a clear remedy and would serve to deter these practices.

Thank you for your consideration and for the opportunity to submit testimony. However, we point out that the HD 2 has a defective date which we would like corrected.

Sincerely,

Roy K. Amemiya, Jr.

Phone: 535-2555

Email:

roy.amemiya@centralpacificbank.com