
HOUSE CONCURRENT RESOLUTION

REQUESTING THE COMMISSIONER OF FINANCIAL INSTITUTIONS TO STUDY
THE FEASIBILITY OF A STATE-OPERATED FINANCIAL INSTITUTION
TO SERVICE MARIJUANA-RELATED BUSINESSES IN HAWAII.

1 WHEREAS, the legalization of medical marijuana in 23
2 states, the District of Columbia, and more recently the
3 legalization of marijuana for recreational use in four states
4 and the District of Columbia have posed complex issues for the
5 banking industry; and

6
7 WHEREAS, any state action does nothing to change that and
8 it does not appear that Congress has any desire or willingness
9 to legalize marijuana at a federal level; and

10
11 WHEREAS, as long as it is considered an illegal substance
12 by federal law, financial institutions across the country have
13 serious risks and challenges if they desire to provide banking
14 services to any businesses involved with marijuana in any form;
15 and

16
17 WHEREAS, that includes obviously businesses growing or
18 selling marijuana, but also landlords or vendors assisting or
19 serving these businesses; and

20
21 WHEREAS, there are several federal statutes, dating back to
22 1970, that affect a financial institution's ability to serve
23 clients involved with marijuana, including the Controlled
24 Substances Act, the Bank Secrecy Act, the Patriot Act, and the
25 Comprehensive Drug Abuse Prevention and Control Act; and

26
27 WHEREAS, as more states legalize marijuana use in some
28 form, there have been some attempts to reconcile federal and
29 state marijuana laws; and
30



1 WHEREAS, the Department of Justice, as well as the
2 Department of Treasury's Financial Crimes Enforcement Network
3 (FinCEN) have issued guidance for banks interested in serving
4 marijuana businesses; and

5
6 WHEREAS, however, as well intended as these guidances may
7 have been, they have been inadequate in providing assurances to
8 banks that they will not face civil or criminal penalties, and
9 even the possibility of losing their charters should they
10 provide financial services to marijuana-related businesses; and

11
12 WHEREAS, in addition to the legal and regulatory risks,
13 banks also face many other significant risks when considering
14 relationships with marijuana businesses; and

15
16 WHEREAS, there is reputation risk, as other bank customers
17 and the community at large may look unkindly at a bank
18 facilitating the distribution of an illegal substance; and

19
20 WHEREAS, there are operational risks, as compliance with
21 FinCEN requirements are significant; and

22
23 WHEREAS, not only are there requirements for extensive due
24 diligence efforts before dealing with a marijuana business, but
25 there are other significant operational challenges on an ongoing
26 basis; and

27
28 WHEREAS, financial institutions must also be cautious in
29 assessing relationships with other clients that might be
30 peripherally related to marijuana businesses, such as landlords
31 and vendors; and

32
33 WHEREAS, and there are lending risks as well, since lending
34 on illegal collateral is prohibited; and

35
36 WHEREAS, this includes lending on marijuana-related real
37 estate; and

38
39 WHEREAS, in those states where marijuana has been legalized
40 for medicinal use, the dispensaries in those states have found
41 that financial institutions in their marketplace have declined
42 to offer banking services; and
43



1 WHEREAS, that includes accepting credit cards for
2 purchases; and
3
4 WHEREAS, so, these dispensaries have had to deal in cash
5 only; and
6
7 WHEREAS, their employees are paid in cash, and they pay all
8 their other bills in cash - even taxes and fees to the
9 government agencies; and
10
11 WHEREAS, in response to the difficulties experience in the
12 State of Colorado, a group of ten citizens organized a Colorado
13 state-chartered credit union to provide much needed banking
14 services to licensed cannabis and hemp businesses, and to
15 thousands of persons, businesses and organizations that
16 supported the legalization of marijuana; and
17
18 WHEREAS, the newly minted credit union promptly applied to
19 open a "master account" at the Federal Reserve Bank of Kansas
20 City; and
21
22 WHEREAS, despite its name, the Federal Reserve Bank is not
23 a federal agency, but a private corporation created by an Act of
24 Congress and run by its own board of directors; and
25
26 WHEREAS, depository institutions can only access the
27 Federal Reserve payments system through a master account or
28 through a correspondent bank that has a master account; and
29
30 WHEREAS, this access is necessary for the electronic
31 transfer of funds; and
32
33 WHEREAS, simply put, without this access, the credit union
34 cannot operate; and
35
36 WHEREAS, on July 16, 2015, the Federal Reserve Bank denied
37 the Credit Union's application for a master account, and the
38 Credit Union filed suit; and
39
40 WHEREAS, simply stated, the Credit Union claimed that it
41 was entitled to open a master account pursuant to the Banking
42 Act of 1935, as amended by § 107 of the Monetary Control Act of
43 1980, 12 U.S.C. § 248a(c)(2); and
44



1 WHEREAS, the Credit Union believed that the Federal Reserve
2 Bank was motivated by a desire to exclude it as a competitor for
3 the marijuana industry's banking business; and

4
5 WHEREAS, the Credit Union sought the United States District
6 Court for the District of Colorado (Court) to exercise its
7 equitable authority to issue a mandatory injunction; and

8
9 WHEREAS, however, the Court held that it could not use its
10 equitable powers to issue an order that would facilitate
11 criminal activity; and

12
13 WHEREAS, citing *In re Arenas*, 535 B.R. 845, 849-50 (10th
14 Cir. BAP 2015), the Court wrote:

15
16 *“ . . . In this case, the [credit union*
17 *is] unfortunately caught between pursuing a*
18 *business that the people of Colorado have*
19 *declared to be legal and beneficial, but*
20 *which the laws of the United States - laws*
21 *that every United States Judge swears to*
22 *uphold - proscribe and subject to criminal*
23 *sanction. . . .”*; and

24
25 WHEREAS, accordingly, the Credit Union's motion for summary
26 judgment was denied and the case was dismissed (See, Civil
27 Action No 15-cv-01633-RBJ, United States District Court for the
28 District of Colorado, Order, January 5, 2016); and

29
30 WHEREAS, the Colorado suit illustrates two major points:

- 31
32 (1) Marijuana-related businesses will not be able to
33 access financial services if financial institutions
34 are not willing to provides these services; and
35
36 (2) It is virtually impossible for the private sector to
37 establish new financial institutions for the sole
38 purpose of providing financial services to marijuana-
39 related businesses since the Federal Reserve Bank, a
40 private entity, has apparently chosen not to do
41 business with these financial institutions; and
42
43



1 WHEREAS, in testimony provided to the House Committee on
2 Health on March 27, 2015 on House Concurrent Resolution No. 136,
3 the Hawaii Bankers Association indicated that none of its
4 members were planning to provide financial services to any
5 marijuana-related businesses established pursuant to Act 241,
6 Session Laws of Hawaii 2015, the Hawaii Medical Marijuana
7 Dispensary Law; and

8
9 WHEREAS, if financial institutions in Hawaii are not
10 willing to provide services to marijuana-related businesses, and
11 it is virtually impossible for the private sector to establish a
12 new financial institution to provide these services, then
13 marijuana-related business will have to conduct operations in
14 cash only; and

15
16 WHEREAS, having marijuana-related businesses operate solely
17 on a cash basis will make adherence to labor and tax laws
18 difficult for employers as well as pose serious threats to the
19 health, welfare and safety of communities where marijuana-
20 related businesses are situated; now, therefore,

21
22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-eighty Legislature of the State of Hawaii, Regular
24 Session of 2016, the Senate concurring, that this body requests
25 the Commissioner of Financial Institutions to study the
26 feasibility of a state-operated financial institution that would
27 operate solely for the purpose of providing financial services
28 to marijuana-related businesses in the State of Hawaii; and

29
30 BE IT FURTHER RESOLVED that the Commissioner of Financial
31 Institutions ascertain the capitalization requirements for a
32 state-operated financial institution based on the projected
33 revenues of marijuana-related businesses, as reported to the
34 Department of Health from medical marijuana dispensary license
35 applicants in accordance with Act 241, Session Laws of Hawaii
36 2015; and

37
38 BE IT FURTHER RESOLVED that the Department of Health is
39 requested to provide any financial data necessary for the
40 Commission of Financial Institutions to perform this study; and

41
42



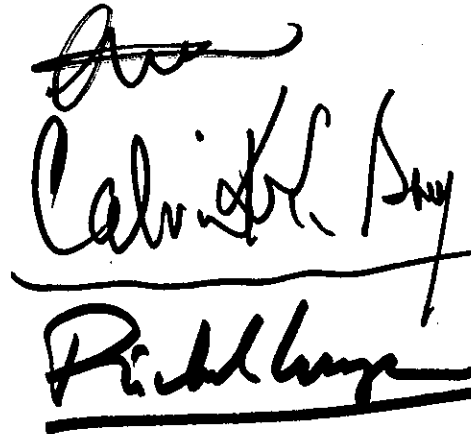
H.C.R. NO. 47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

BE IT FURTHER RESOLVED that the Commissioner of Financial Institutions submit a report of the findings and recommendations, including any proposed legislation, to the Legislature at least twenty days prior to the convening of the Regular Session of 2017; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Commission of Financial Institutions; the Director of Health; the Attorney General; and the Executive Director of the Hawaii Bankers Association.

OFFERED BY:



Calvin L. King



Rick Long

FEB 24 2016

