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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

MONDAY, MARCH 14, 2016
2:00 p.m.

**TESTIMONY ON H.C.R. No. 47
REQUESTING THE COMMISSIONER OF FINANCIAL INSTITUTIONS TO STUDY
THE FEASIBILITY OF A STATE-OPERATED FINANCIAL INSTITUTION
TO SERVICE MARIJUANA-RELATED BUSINESSES IN HAWAII**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
Department of Commerce and Consumer Affairs, offering comments regarding House
Concurrent Resolution No. 47 ("H.C.R. No. 47").

H.C.R. No. 47 requests that the Commissioner:

- 1) Study the feasibility of a State-operated financial institution ("State marijuana bank") that would operate solely for the purpose of providing financial services to marijuana-related businesses in the State of Hawaii;

- 2) Ascertain the capitalization requirements for a State marijuana bank based on the projected revenues of marijuana-related businesses, as reported to the Department of Health from medical marijuana dispensary license applicants in accordance with Act 241, Session Laws of Hawaii 2015; and
- 3) Submit a report of the findings and recommendations, including any proposed legislation, to the Legislature prior to the convening of the Regular Session of 2017.

With respect to the first point, the feasibility of establishing a State marijuana bank appears to be unlikely at this point. Basically, the significant federal obstacles to legal banking for the marijuana industry would not be overcome by chartering a State marijuana bank pursuant to State law. This is because marijuana remains a Schedule 1 substance under federal law. Congress would need to act in order to allow banks and credit unions to accept marijuana related business accounts. Otherwise, there remain concerns that the federal government could prosecute the banks, seize assets, and terminate deposit insurance for financial institutions that have marijuana related businesses. For example, a newly created credit union was unable to receive a Federal Reserve master account and deposit insurance from the NCUA because of its marijuana related business activity. The State cannot guarantee any of Hawaii's financial institutions safe harbor from federal law.

Federal agencies have issued guidance about marijuana related businesses and the responsibility of financial institutions if they have marijuana related business accounts. The federal government reserves the right to enforce federal law if the state does not implement strong and effective regulatory and enforcement systems that will address public safety, public health and other law enforcement concerns or gaps in state marijuana laws. Among the law enforcement concerns that are monitored by the federal government, money laundering and drug trafficking – which banks are responsible to detect – are included.

On the second point of this measure, the Commissioner submits that a State marijuana bank should have the same capitalization requirements as other financial institutions regulated by the Division of Financial Institutions (“DFI”) under Chapter 412, Hawaii Revised Statutes, which is the State’s Code of Financial Institutions. DFI has previously noted concerns regarding the feasibility of starting a state bank in Hawaii and that a Massachusetts Federal Reserve Bank study estimated that the startup cost for a Bank of Massachusetts today would be around \$3.6 billion, based on a \$2 million initial capitalization level back in 1919 for the Bank of North Dakota. This extrapolation included adjustments for inflation and for growth in the size of the economy from 1919 to today - assuming a 13-fold expansion. Based on Hawaii’s capitalization requirements, the minimum capitalization requirement for a state bank would be \$325 million. That capitalization number would be adjusted by risk factors including volatility

in price of the commodity, security of the assets, and the mono-line aspect of the customers.

With respect to the third point, as noted above, state legislation would not counter risks stemming from the illegality of marijuana at the federal level.

The DFI website has a link to the Commissioner's presentation to the Hawaii State Bar Association in October 2015, on the status of banking for the marijuana industry, <http://cca.hawaii.gov/dfi/banking-and-marijuana-dispensaries/>. As shown in the slide deck, the Commissioner's position is that in Hawaii:

- Banks and other financial institutions may open accounts for high risk businesses such as medical marijuana related businesses based on the risk assessment and risk tolerance of the financial institution.
- Banks and other financial institutions must implement and follow appropriate customer due diligence standards.
- Regulators will be examining banks for BSA/AML [Bank Secrecy Act/Anti-Money Laundering rules] compliance.

(Note that information provided in the Commissioner's presentation is subject to change at any time in response to changes in current laws and guidance.)

It would be helpful for legal marijuana businesses to have banking services available to them in the State. However, while the financial institutions may abide by

the instructions above, the Commissioner has no control over actions at the federal level and is responsible to enforce federal laws on the banks.

Finally, while the Commissioner has no objection to performing the tasks requested by H.C.R. No. 47, it is respectfully submitted that a State marijuana bank will not protect either the State marijuana bank or its customers from possible federal law enforcement actions. Those concerns depend on action at the federal level, rather than by the State of Hawaii. An in depth study of marijuana banking by the Commissioner would require an in-person examination and investigation by the Commissioner and DFI staff of the challenges, issues and possible solutions to these issues in approximately eight states that are actively trying to implement marijuana banking, at an estimated cost of \$100,000. DFI is self-funded by licensees, so the cost to cover such a study is not available in the DFI budget, and it may not be appropriate to pay for from fees paid by DFI licensees.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

Presentation To
House Committee on Consumer Protection and Commerce
March 14, 2016 at 2:00 PM
State Capitol Conference Room 325

Testimony Offering Comments for House Concurrent Resolution 47

TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eleven FDIC insured depository institutions with branch offices in the State of Hawaii.

As your resolution has noted, banks throughout the country face significant risks providing financial services to marijuana dispensaries and other related businesses. While legally authorized by State legislation to enter into this business activity, the fact that Federal statutes still consider marijuana a Schedule I controlled substance makes it exceedingly difficult for banks to engage into relationships with these legitimate businesses.

Your resolution noted the challenges experienced by Fourth Corner Credit Union in Colorado and their attempt to seek access to the Federal Reserve system and the Court's ruling in support of the Federal Reserve's action denying access. Any financial institution established in Hawaii will face a similar fate. Without such access, and without FDIC insurance, banks will not be able to provide traditional services like checking accounts to its customers.

We sympathize with these businesses unable to secure banking services and the only real solution is to ask Congress to take action to assist them, either by legalizing marijuana, or by specifically allowing banks to serve these businesses. Last year, Representatives Ed Perlmutter (CO) and Denny Heck (WA) re-introduced a bill (H. R. 2076) that will do exactly that. So, rather than to conduct a study which will produce what we already know, perhaps the effort should be focused on getting our Congressional delegation to support the efforts of Perlmutter and Heck to seek an acceptable and effective solution to this dilemma.

Thank you for the opportunity to offer our comments and please let us know if we can provide further information.



Edward Y. W. Pei
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Testimony to the House Committee on Consumer Protection & Commerce
March 14, 2016

Testimony in Opposition to HCR 47, Requesting the Commissioner of Financial Institutions to Study the Feasibility of a State-Operated Financial Institution to Service Marijuana-Related Businesses in Hawaii.

To: The Honorable Angus McKelvey, Chair
The Honorable Justin Woodson, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 63 Hawaii credit unions, representing approximately 800,000 credit union members across the state. We offer the following comments on HCR 47.

We agree with the statements made in HCR 47 with regards to the reasons that Hawaii credit unions and local banks have thus far been unable to open and service accounts for marijuana dispensary businesses. When the State of Hawaii legalized medical marijuana dispensaries in the state, several local credit unions were approached about the possibilities of opening member business accounts for these businesses. However, because of the nature of the business, federal law determines that credit unions would be unable to open these accounts. While some financial institutions on the mainland have made the decision to open these accounts, it is ultimately up to the individual institution. Coupled with what occurred with the Fourth Corner Credit Union in Colorado, the prospect of opening marijuana business accounts remains highly risky.

HCR 47 also requests that the Commissioner of Financial Institutions study the feasibility of a state-run financial institution for the purpose of opening and servicing marijuana-related business accounts. Funds being deposited into a state bank would apparently be insured by the state itself. Without the benefit of being insured by a separate entity like the National Credit Union Administration (which insures and oversees all credit unions in the State of Hawaii), the state would be in an extremely precarious situation in the event of any financial difficulty within the bank, and within the state. Further, pursuant to the State's Code of Financial Institutions (HRS Ch. 412:4-104), it is a requirement that all depository institutions be federally insured. Therefore, a state-owned, and state-insured bank would be in violation of state law if it accepts deposits.

Thank you for the opportunity to provide comments.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 10, 2016 10:25 AM
To: CPCtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for HCR47 on Mar 14, 2016 14:00PM*

HCR47

Submitted on: 3/10/2016

Testimony for CPC on Mar 14, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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