

---

# A BILL FOR AN ACT

---

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

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

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

4 **"§412: - Request for information by the commissioner.**

5 The commissioner, for good cause, may at any time request  
6 records, documents, information, and reports from any financial  
7 institution regulated by the division of financial  
8 institutions."

9 SECTION 2. Section 412:1-104, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§412:1-104 Names.** (a) Unless authorized to engage in  
12 business as a financial institution in this State of the type  
13 indicated by the name or as otherwise approved by the  
14 commissioner, no person may use any of the terms "financial  
15 institution," "bank," "savings bank," "savings and loan,"  
16 "savings association," "financial services loan company,"  
17 "credit union," "trust company," "intra-Pacific bank,"  
18 "international banking corporation," words of similar import, or



1 translations of such words, in a manner that might suggest or  
2 tend to lead others into believing that the person is a  
3 financial institution of the character indicated by the name.

4 (b) No financial institution may use words designating  
5 another type of financial institution, or words of similar  
6 import, or translations of such words, in a manner that suggests  
7 or might tend to lead others into believing that it is that type  
8 of financial institution.

9 (c) No financial institution may use a name except in  
10 accordance with section 412:3-101."

11 SECTION 3. Section 412:1-109, Hawaii Revised Statutes, is  
12 amended by amending the definitions of "capital", "capital  
13 stock", "Hawaii financial institution", and "stock financial  
14 institution" to read as follows:

15 "Capital" means: (1) the aggregate par value or other  
16 amount received and allocated to the issued and outstanding  
17 capital stock of a financial institution; or (2) the total  
18 amount of [~~a mutual savings and loan association or~~] a credit  
19 union's outstanding and unimpaired membership shares or share  
20 accounts.

21 "Capital stock" means the units of interest, whether or not  
22 having a par value, common or preferred, legally issued by a



1 financial institution or other corporation, which represents a  
2 fractional ownership interest in the institution or corporation.  
3 The term does not include shares or membership in a [~~mutual~~  
4 ~~savings and loan association or~~] credit union.

5 "Hawaii financial institution" means:

- 6 (1) A corporation or credit union which holds a charter or  
7 license under this chapter or under prior Hawaii law,  
8 authorizing it to accept deposits, to make loans in  
9 excess of the rates permitted in chapter 478, or to  
10 engage in the business of a trust company; or  
11 (2) A resulting bank as defined in article 12, and  
12 includes a corporation[~~, mutual savings and loan~~  
13 ~~association,~~] or credit union existing and chartered  
14 as a Hawaii financial institution or licensed to  
15 transact business in this State on July 1, 1993. A  
16 Hawaii financial institution may be a bank, resulting  
17 bank as defined in article 12, savings bank, savings  
18 and loan association, depository financial services  
19 loan company, nondepository financial services loan  
20 company, trust company, credit union, or intra-Pacific  
21 bank.



1 "Stock financial institution" means a financial institution  
2 which issues shares of capital stock as evidence of fractional  
3 ownership in the institution. The term does not include [~~mutual~~  
4 ~~savings and loan associations or~~] credit unions."

5 SECTION 4. Section 412:2-104, Hawaii Revised Statutes, is  
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) The commissioner and all employees, contractors,  
8 attorneys retained or employed by the State, and appointees of  
9 the division of financial institutions shall not divulge or  
10 furnish any information in their possession or obtained by them  
11 in the course of their official duties to persons outside the  
12 division of financial institutions, except the director of [~~the~~  
13 ~~department of~~] commerce and consumer affairs, or unless  
14 otherwise permitted by this section or any other law regulating  
15 financial institutions or financial institution holding  
16 companies, in which case such disclosure shall not authorize or  
17 permit any further disclosure of such information. The  
18 disclosures prohibited by this section shall include without  
19 limitation information that is:

20 (1) Privileged or exempt from disclosure under any federal  
21 or state law;



- 1           (2) Related to an examination performed by or on behalf of  
2           the commissioner or contained in any report of  
3           examination;
- 4           (3) Contained in any report submitted to or for the use of  
5           the commissioner, except for the nonproprietary  
6           portions of applications;
- 7           (4) Related to the business, personal, or financial  
8           affairs of any person and is furnished to or for the  
9           use of the commissioner in confidence;
- 10          (5) Related to trade secrets and commercial or financial  
11          information obtained from a person and is privileged  
12          or confidential;
- 13          (6) Obtained pursuant to any lawful investigation for the  
14          purpose of enforcing the laws regulating financial  
15          institutions and financial institution holding  
16          companies in an action or proceeding under parts III,  
17          IV, V, and VI of this article;
- 18          (7) Related solely to the internal personnel rules or  
19          other internal practices of the commissioner;
- 20          (8) Contained in personnel, medical, and similar files  
21          (including financial files), the disclosure of which

1           would constitute a clearly unwarranted invasion of  
2           personal privacy; or  
3           (9) Contained in inter-agency and intra-agency  
4           communications, whether or not contained in written  
5           memoranda, letters, tapes, or records that would not  
6           be routinely available by law to a private party,  
7           including but not limited to memoranda, reports, and  
8           other documents prepared by the staff of the  
9           commissioner.

10           Any information identified in paragraphs (1) through (9) is  
11           confidential and shall not be subject to subpoena or other legal  
12           process.

13           (b) The commissioner shall furnish a copy of each report  
14           of examination to the financial institution or financial  
15           institution holding company examined. The report and its  
16           contents shall remain the property of the commissioner and shall  
17           not be disclosed to any person who is not an officer, director,  
18           employee, or authorized auditor, attorney, or other consultant  
19           or advisor of the financial institution or financial institution  
20           holding company. Any person [~~which~~] who has received the report  
21           from the financial institution or financial institution holding  
22           company shall be bound by the confidentiality provisions of this



1 part. [~~Subpoenas of or other legal process to obtain reports of~~  
2 ~~examination or information contained therein shall be directed~~  
3 ~~to the commissioner and not to the financial institution or~~  
4 ~~financial institution holding company that is the subject of the~~  
5 ~~examination. Upon receipt of such a subpoena or other legal~~  
6 ~~process requiring disclosure of such information the~~  
7 ~~commissioner may file a statement of objections or a motion with~~  
8 ~~a court of competent jurisdiction for a protective order and, in~~  
9 ~~any event, shall immediately notify the financial institution~~  
10 ~~that is the subject of the report of examination of the subpoena~~  
11 ~~or other legal process and all relevant circumstances pertaining~~  
12 ~~to the same. Upon receipt of such notification, the financial~~  
13 ~~institution may itself file a statement of objections or a~~  
14 ~~motion with a court of competent jurisdiction for a protective~~  
15 ~~order.] The report and its contents shall not be subject to  
16 subpoena or other legal process requiring disclosure.~~

17 SECTION 5. Section 412:2-109, Hawaii Revised Statutes, is  
18 amended by amending subsection (g) to read as follows:

19 "(g) Each year [~~before July 2~~], the commissioner may  
20 charge each financial institution subject to examination by the  
21 commissioner [~~shall pay a~~] the sum of \$500 plus \$100 for each  
22 office, agency, and branch office maintained by the financial



1 institution, [~~to the commissioner to~~] payment of which shall be  
2 made before July 2 and thereafter credited to the compliance  
3 resolution fund. The commissioner may establish, increase,  
4 decrease, or repeal this fee when necessary pursuant to rules  
5 adopted in accordance with chapter 91."

6 SECTION 6. Section 412:2-306, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§412:2-306 Removal or prohibition of institution-**  
9 **affiliated party.** (a) The commissioner may order the removal  
10 of any institution-affiliated party from office or employment  
11 with a Hawaii financial institution and the prohibition of the  
12 party's affiliation or participation in the affairs of the  
13 financial institution or any other Hawaii financial institution  
14 if the commissioner determines that all three of the following  
15 circumstances exist:

16 (1) The institution-affiliated party has violated this  
17 chapter or any rules [~~issued~~] adopted pursuant to this  
18 chapter, violated a cease and desist order which has  
19 become effective, engaged or participated in an unsafe  
20 or unsound practice in connection with the financial  
21 institution, or breached a fiduciary duty owed to the  
22 financial institution;





1           (2) By reason of such violation, practice, or breach the  
2           financial institution has suffered or will probably  
3           suffer financial loss or other damage, the interests  
4           of the financial institution's depositors have been or  
5           may be prejudiced, or the institution-affiliated party  
6           has received financial gain or other benefit as a  
7           result of the violation, practice, or breach; and

8           (3) The violation, practice, or breach involves the  
9           institution-affiliated party's personal dishonesty, or  
10          demonstrates the party's wilful or continuing  
11          disregard for the safety or soundness of the financial  
12          institution.

13          (b) The commissioner may also order the removal of any  
14          institution-affiliated party from office or employment with a  
15          Hawaii financial institution and the prohibition of the party's  
16          affiliation or participation in the affairs of the financial  
17          institution or any other Hawaii financial institution if the  
18          commissioner determines that:

19          (1) The institution-affiliated party has been charged in  
20          any information, indictment, or complaint authorized  
21          by a United States attorney, state attorney general,  
22          or similar legal officer, with the commission of, or



1 participation[7] in, a crime involving dishonesty or  
2 breach of trust that is punishable by imprisonment for  
3 a term exceeding one year under state or federal law;  
4 and

5 (2) The continued service by the institution-affiliated  
6 party may pose a threat to the interests of the  
7 institution's depositors or may threaten to impair  
8 public confidence in the institution."

9 SECTION 7. Section 412:2-307, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) The notice of charges and the proposed order of  
12 removal or prohibition shall be in writing and served upon the  
13 institution-affiliated party and the affiliated Hawaii financial  
14 institution. The notice of charges shall state the alleged  
15 violations, wrongful practices, or breaches and a summary of the  
16 facts upon which [~~such~~] the allegations are based. The notice  
17 shall be accompanied by a proposed order stating the  
18 commissioner's intention to remove [~~such~~] the party from office,  
19 or prohibit [~~such~~] the party's affiliation with the financial  
20 institution[7] or any other Hawaii financial institution, or  
21 both. The notice of charges shall set forth a time and place



1 for a hearing to determine whether the removal or prohibition  
2 order shall be issued."

3 SECTION 8. Section 412:2-308, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) In order to act with the utmost speed, the  
6 commissioner may issue an order immediately suspending an  
7 institution-affiliated party upon a determination that (1) the  
8 grounds specified in section 412:2-306 are present; and (2) the  
9 protection of depositors or the financial institution warrant  
10 the immediate suspension and prohibition of the institution-  
11 affiliated party from further participation in the conduct of  
12 the affairs of the financial institution~~[-]~~ or any other Hawaii  
13 financial institution. The order shall be accompanied by a  
14 notice of charges [~~which~~] that states the alleged violation,  
15 wrongful practice or breach, and a summary of the facts in  
16 support of [~~such~~] the allegation. The notice of charges shall  
17 set forth a time and place for a hearing to determine whether  
18 the temporary order shall be made permanent. Any order of  
19 immediate suspension issued to an institution-affiliated party  
20 shall also be served upon the affiliated Hawaii financial  
21 institution."



1 SECTION 9. Section 412:2-310, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§412:2-310 Removal, prohibition, or suspension; effect of**  
4 **order.** No institution-affiliated party whose removal,  
5 prohibition, or suspension has been ordered shall thereafter  
6 participate in any manner in the conduct of the affairs of the  
7 affiliated Hawaii financial institution or any other Hawaii  
8 financial institution as long as [~~such~~] the order is in effect.  
9 Any violation of [~~such~~] the order shall constitute a violation  
10 of law, and shall constitute sufficient grounds for the issuance  
11 of a cease and desist order to the affiliated financial  
12 institution."

13 SECTION 10. Section 412:3-101, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§412:3-101 Name of financial institution.** (a) The name  
16 of every Hawaii financial institution shall be subject to the  
17 approval of the commissioner and shall conform with the  
18 provisions of section 414-51 or any successor thereto, whether  
19 or not the Hawaii financial institution is a corporation. If  
20 the Hawaii financial institution is incorporated, its name may,  
21 but need not, contain the word [~~"corporation", "incorporated",~~



1 ~~or "limited",]~~ "corporation," "incorporated," or "limited," or  
2 an abbreviation of one of the words.

3 (b) Prior to using a trade name or a fictitious name, a  
4 Hawaii financial institution shall provide written notification  
5 to the commissioner."

6 SECTION 11. Section 412:3-102, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§412:3-102 Change of name.** To change its name, a Hawaii  
9 financial institution shall file an application with the  
10 commissioner and pay [~~such~~] the fees as the commissioner may  
11 establish. The application shall be approved if the  
12 commissioner is satisfied that the new name complies with this  
13 chapter and chapter 414. Any change of name of a stock  
14 financial institution [~~or mutual savings and loan association~~]  
15 pursuant to this section shall be effected in accordance with  
16 chapter 414. Any change of name shall not affect a financial  
17 institution's rights, liabilities, or obligations existing prior  
18 to the effective date thereof, and no documents of transfer  
19 shall be necessary to preserve [~~such~~] the rights, liabilities,  
20 or obligations; provided that the commissioner may require  
21 notice to be given to the public and other governmental  
22 agencies."



1 SECTION 12. Section 412:3-111, Hawaii Revised Statutes, is  
2 amended by amending subsection (g) to read as follows:

3 "(g) The following records or files of a Hawaii financial  
4 institution shall not be destroyed except in accordance with  
5 rules of the commissioner promulgated under chapter 91:

6 (1) Minute books of meetings of shareholders, directors,  
7 and executive committee;

8 (2) Amendments to articles of incorporation or association  
9 or to the bylaws;

10 [~~2~~] (3) Capital stock ledger; and

11 [~~3~~] (4) General ledgers and trust ledgers.

12 These records and files may be maintained in original form  
13 or in the form of a photographic, photostatic, microfilm,  
14 microcard, miniature photographic, or other reproduction by a  
15 durable medium for reproducing the original."

16 SECTION 13. Section 412:3-114, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§412:3-114 Duty to report illegal acts.** A Hawaii  
19 financial institution shall immediately notify the commissioner  
20 in writing of any act of robbery, embezzlement, or fraud  
21 committed in connection with its affairs whenever the concerned  
22 act involves a sum in excess of [~~\$10,000.~~] \$100,000."



1 SECTION 14. Section 412:3-201, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§412:3-201 Application for preliminary approval to  
4 organize financial institution. (a) Three~~[7]~~ or more  
5 individuals, of whom at least three are residents of the State,  
6 or any company [~~which~~] that seeks to become a financial  
7 institution holding company may file an application with the  
8 commissioner for preliminary approval to organize a Hawaii  
9 financial institution under this part. Banks seeking authority  
10 to engage in the trust business through a division or department  
11 of the bank, or through a subsidiary, shall apply for such  
12 authority under section 412:5-205.

13 (b) The application shall contain the following  
14 information, unless waived by the commissioner:

15 (1) The proposed name of the financial institution~~[, the]~~;

16 (2) The specific location of its principal office,  
17 branches, agencies, and support facilities, and any  
18 lease agreements for such principal office~~[+]~~,  
19 branches, agencies, and support facilities;

20 [~~(2) Financial~~] (3) The financial statements, employment  
21 history, education, management experience, and other  
22 biographical information for all applicants,



1 organizers, proposed executive officers, and directors  
2 of the financial institution;

3 ~~[(3)]~~ (4) The name and address of each proposed subscriber  
4 of capital stock in the financial institution ~~[and if~~  
5 ~~capital has not been fully raised, a]~~;

6 (5) The proposed capital plan [including a], if capital  
7 has not been fully raised, shall include:

8 (A) A description of any stock options, debentures,  
9 and stock warrants offered or proposed to be  
10 offered to any person; and

11 (B) Any stock option plan;

12 (6) The proposed capital stock solicitation plan, if  
13 subscriptions for capital stock will be solicited,  
14 that shall include:

15 (A) Information regarding the solicitation plan by  
16 which the applicant and the proposed financial  
17 institution propose to conduct the solicitation  
18 of subscribers;

19 (B) Information regarding the classes of shares,  
20 respective quantities of shares for each class,  
21 and the subscription price of each class of  
22 stock;





- 1           (C) A specimen subscription contract or purchase  
2                           agreement and other related documents to be  
3                           executed by subscribers;
- 4           (D) Any underwriting agreement or other agreement for  
5                           the purchase or distribution of the capital  
6                           stock;
- 7           (E) Any escrow agreements or other agreement for the  
8                           holding of the purchase proceeds of the capital  
9                           stock;
- 10          (F) Proposed advertising materials;
- 11          (G) If the offer and sale of the capital stock is  
12                           subject to the Securities Act of 1933 and  
13                           regulations thereunder, a copy of the  
14                           registration statement most recently filed with  
15                           the federal Securities and Exchange Commission or  
16                           any other notices or other filings in lieu of  
17                           registration required or permitted by that act or  
18                           regulation and any subsequent amendments thereto;
- 19          (H) If the offer and sale of the capital stock is  
20                           subject to chapter 485, a copy of the  
21                           registration or qualification statement most  
22                           recently filed with the commissioner of



1 securities and any subsequent amendments thereto;

2 and

3 (I) If the offer and sale of the capital stock is not  
4 subject to the Securities Act of 1933 or chapter  
5 485, whether exempted by law or regulation or  
6 otherwise, a copy of the most recent version of  
7 any prospectus, offering memorandum, offering  
8 circular, or other offering document proposed to  
9 be delivered to prospective subscribers to the  
10 capital stock, and any subsequent amendments  
11 thereto;

12 [~~4~~] Proposed] (7) The financial [institution]  
13 institution's proposed policies concerning loans[~~7~~]  
14 and concentrations of credit, asset and liability  
15 management, conflicts of interest, investments,  
16 [~~operations, and~~] community reinvestment[~~+~~], and bank  
17 secrecy, anti-money laundering, and customer  
18 identification;

19 [~~5~~] (8) The financial institution's business plan[~~+~~] for  
20 the first three years of operations;



1        [~~(6)~~ ~~Financial~~] (9) The financial projections regarding  
2        the financial institution's profitability~~[7]~~ for the  
3        first three years of operations;

4        [~~(7)~~] (10) A market study or letters of support evidencing  
5        the need and advisability of granting authority to  
6        organize a financial institution;

7        [~~(8)~~] (11) Except for trust companies, evidence that the  
8        financial institution has applied for federal deposit  
9        insurance from the Federal Deposit Insurance  
10       Corporation or other appropriate federal deposit  
11       insurer;

12       (12) Evidence that the financial institution has applied  
13       for fidelity bonds and other insurance appropriate to  
14       its size and operations, including the types and the  
15       amounts of coverage, and the respective deductible  
16       amounts, from insurance companies licensed in the  
17       United States;

18       [~~(9)~~] (13) Evidence that the proposed directors and  
19       executive officers of the financial institution have  
20       the financial ability, responsibility, and experience  
21       to engage in the business of a financial institution;



1        (14) The employment agreements for all proposed executive  
2                    officers of the financial institution;

3        (15) The proposed articles of incorporation and bylaws of  
4                    the financial institution;

5        [~~10~~] (16) A description of any existing or proposed  
6                    service corporation, affiliate, or subsidiary; and

7        [~~11~~] (17) Any other information that the commissioner may  
8                    require.

9            (c) The application shall be submitted in a form  
10        prescribed by the commissioner. The commissioner may accept  
11        application forms which are utilized by any federal regulatory  
12        agency in processing similar applications. The application  
13        shall be accompanied by an application fee of \$9,000, or such  
14        greater amount as the commissioner shall establish by rule  
15        pursuant to chapter 91. The application fee shall not be  
16        refundable.

17            (d) The identity of each applicant and organizer, and any  
18        information which is not confidential shall be available to the  
19        public. The applicant may request in writing that information  
20        be kept confidential. The applicant shall designate and  
21        separate any matter which the applicant claims is confidential  
22        and shall submit a separate statement providing the reasons and



1 authority for the request for confidential treatment. The  
2 failure by the applicant to request confidential treatment and  
3 designate and separate the confidential matter shall preclude  
4 any objection or claim for wrongful disclosure of the same.  
5 Information determined by the commissioner to be confidential,  
6 pursuant to an applicant's request or otherwise, shall not be  
7 available to the public.

8 (e) The commissioner shall review the application, may  
9 conduct an examination of the proposed financial institution,  
10 and may interview any proposed director or executive officer."

11 SECTION 15. Section 412:3-202, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§412:3-202 Additional requirements for holding company.**

14 [~~a~~] An applicant for the organization of a Hawaii financial  
15 institution which will be a subsidiary of a holding company  
16 shall furnish the commissioner with the following additional  
17 information regarding the holding company, unless waived by the  
18 commissioner:

19 (1) If the holding company is a corporation, a certificate  
20 from the incorporating jurisdiction indicating that  
21 the corporation was properly organized under



- 1 applicable corporate law, and that it is otherwise in  
2 good standing;
- 3 (2) Its existing and proposed affiliates and subsidiaries,  
4 and the extent and nature of its control over the  
5 operations of the proposed financial institution;
- 6 (3) ~~[Financial]~~ The financial statements, employment  
7 history, education, management experience, and other  
8 biographical information for all of its executive  
9 officers and directors;
- 10 (4) The name and address of each shareholder or each  
11 proposed subscriber of capital stock~~[, and if capital~~  
12 ~~has not been fully raised, a]~~;
- 13 (5) The proposed capital plan [including a], if capital  
14 has not been fully raised, shall include:
- 15 (A) A description of any stock options, debentures,  
16 and stock warrants offered or proposed to be  
17 offered to any person; and
- 18 (B) Any stock option plan;
- 19 (6) The proposed capital stock solicitation plan, if  
20 subscriptions for capital stock will be solicited,  
21 shall include:



- 1           (A) Information regarding the solicitation plan by  
2           which the applicant and the proposed holding  
3           company propose to conduct the solicitation of  
4           subscribers;
- 5           (B) Information regarding the classes of shares,  
6           respective quantities of shares for each class,  
7           and the subscription price of each class of  
8           stock;
- 9           (C) A specimen subscription contract or purchase  
10          agreement and other related documents to be  
11          executed by subscribers;
- 12          (D) Any underwriting agreement or other agreement for  
13          the purchase or distribution of the capital  
14          stock;
- 15          (E) Any escrow agreements or other agreement for the  
16          holding of the purchase proceeds of the capital  
17          stock;
- 18          (F) Proposed advertising materials;
- 19          (G) If the offer and sale of the capital stock is  
20          subject to the Securities Act of 1933 and  
21          regulations thereunder, a copy of the  
22          registration statement most recently filed with



1           the federal Securities and Exchange Commission or  
2           any other notices or other filings in lieu of  
3           registration required or permitted by that Act or  
4           regulation and any subsequent amendments thereto;

5           (H) If the offer and sale of the capital stock is  
6           subject to chapter 485, a copy of the  
7           registration or qualification statement most  
8           recently filed with the commissioner of  
9           securities and any subsequent amendments thereto;

10           and

11           (I) If the offer and sale of the capital stock is not  
12           subject to the Securities Act of 1933 or chapter  
13           485, whether exempted by law or regulation or  
14           otherwise, a copy of the most recent version of  
15           any prospectus, offering memorandum, offering  
16           circular, or other offering document proposed to  
17           be delivered to prospective subscribers to the  
18           capital stock, and any subsequent amendments  
19           thereto;

20           (7) The articles of incorporation and bylaws of the  
21           holding company;





1       ~~[-5-]~~ (8) Evidence that it has or will have the financial  
2           ability, responsibility, and experience to engage in  
3           the business of a financial institution holding  
4           company; ~~[and]~~

5       (9) The employment agreements for all executive officers  
6           of the holding company; and

7       ~~[-6-]~~ (10) Any other information that the commissioner may  
8           require.

9       ~~[-(b)- The commissioner may issue a preliminary decision~~  
10 ~~regarding the qualifications of the holding company.]"~~

11       SECTION 16. Section 412:3-203, Hawaii Revised Statutes, is  
12 amended to read as follows:

13       "**§412:3-203 Deferral of application requirements.** For  
14 good cause, the commissioner may defer specific application  
15 requirements until the filing of an application for a charter or  
16 [a] license."

17       SECTION 17. Section 412:3-204, Hawaii Revised Statutes, is  
18 amended to read as follows:

19       "**§412:3-204 Publication of notice.** (a) Once the  
20 application to organize a Hawaii financial institution is  
21 complete and has been accepted by the commissioner, the  
22 applicant shall publish a notice at least once a week for three



1 successive weeks in a newspaper of general circulation in each  
2 county in this State where the proposed financial institution  
3 intends to establish a principal office, branch, or agency.

4 (b) The notice shall be in a form prescribed by the  
5 commissioner and shall state the fact that an application has  
6 been filed, the names of the applicant and organizers, the  
7 location of the financial institution's proposed [~~place~~] places  
8 of business, and the amount of its proposed capital. The notice  
9 shall also state that within fifteen days after the last  
10 publication of the notice any person may file with the  
11 commissioner written comments on the application or a request  
12 for an informational and comment proceeding to present  
13 information and comments to the commissioner. Any request for  
14 an informational and comment proceeding shall be accompanied by  
15 a brief statement of the person's interest in the application,  
16 the matters to be discussed at the informational and comment  
17 proceeding, and the reasons why written comments will not  
18 suffice in lieu of an informational and comment proceeding."

19 SECTION 18. Section 412:3-206, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§412:3-206 Grant of preliminary approval to organize a  
22 financial institution. (a) Following the expiration of the



1 time for the submission of written comments or the completion of  
2 an informational and comment proceeding, the commissioner shall  
3 issue a written decision and order on the application for  
4 preliminary approval to organize. If the commissioner approves  
5 the application, the applicant shall become an "applicant in  
6 organization," and may take all steps necessary to complete  
7 organization and file an application for a charter or license.

8 (b) An application for preliminary approval to organize  
9 shall be approved only if the commissioner finds that:

10 (1) The proposed activities of the financial institution  
11 will comply with the requirements of this chapter;

12 (2) If the financial institution will be a subsidiary of a  
13 holding company, the holding company is or will be  
14 properly organized, in good standing, and financially  
15 sound, and is not or will not be engaging directly or  
16 indirectly through any subsidiary or affiliate in  
17 business prohibited by this chapter;

18 (3) The qualifications, character, financial  
19 responsibility, experience, and general fitness of the  
20 proposed directors and executive officers of the  
21 financial institution and any holding company are such  
22 as will warrant public confidence and a belief that



1 the business of the financial institution will be  
2 honestly and efficiently conducted. For purposes of  
3 this section, the commissioner may presume that in the  
4 absence of credible evidence to the contrary, a  
5 director, officer, or controlling person is of good  
6 character and sound financial standing. Such  
7 presumption may be rebutted by evidence to the  
8 contrary, including without limitation a finding that  
9 such director, officer, or controlling person has:

10 (A) Been convicted of, or has pleaded nolo contendere  
11 to, any crime involving an act of fraud or  
12 dishonesty;

13 (B) Consented to or suffered a judgment in any civil  
14 action based upon conduct involving an act of  
15 fraud or dishonesty;

16 (C) Consented to or suffered the suspension or  
17 revocation of any professional, occupational, or  
18 vocational license based upon conduct involving  
19 an act of fraud or dishonesty;

20 (D) Wilfully made or caused to be made in any  
21 application or report filed with the  
22 commissioner, or in any proceeding before the



- 1 commissioner, any statement which was at the time  
2 and in the light of the circumstances under which  
3 it was made false or misleading with respect to  
4 any material fact, or has wilfully omitted to  
5 state in any application or report any material  
6 fact which was required to be stated therein; or  
7 (E) Wilfully committed any violation of, or has  
8 wilfully aided, abetted, counseled, commanded,  
9 induced, or procured the violation by any other  
10 person of, any provision of this chapter or of  
11 any rule or order issued under this chapter;  
12 [~~and~~]
- 13 (4) The proposed operations of the financial institution  
14 will be conducted in a safe and sound manner[-];
- 15 (5) The articles of incorporation of the financial  
16 institution comply in all respects with this chapter  
17 and chapter 414; and
- 18 (6) The capital stock solicitation submission is complete  
19 and the solicitation will not affect the safety or  
20 soundness of the proposed financial institution or  
21 harm the public interest.



1 (c) In granting preliminary approval to organize, the  
2 commissioner may impose any conditions and restrictions that are  
3 in the public interest, including but not limited to requiring  
4 the applicant to fulfill representations contained in its  
5 application and agreements made with the commissioner during the  
6 application process.

7 (d) Upon the issuance of a written decision and order  
8 granting the application for preliminary approval to organize,  
9 the articles of incorporation may be delivered by the applicant  
10 in organization to the director of commerce and consumer affairs  
11 for filing and, if accepted for filing, the financial  
12 institution shall have corporate existence. Although the  
13 proposed financial institution may have corporate existence, it  
14 may not transact any financial institution business until it has  
15 received a financial institution charter or license under this  
16 article; provided that the financial institution may conduct any  
17 transaction that is incidental and necessary to prepare to do a  
18 financial institution business and obtain a charter or license.

19 (e) The applicant and the proposed Hawaii financial  
20 institution shall not solicit subscriptions for the capital  
21 stock of the Hawaii financial institution until the written  
22 decision and order granting the application for preliminary



1 approval to organize has been issued and the articles of  
2 incorporation have been accepted for filing by the director of  
3 commerce and consumer affairs. The approval shall not  
4 constitute a determination that the applicant has complied with  
5 chapter 485 or any other state or federal law."

6 SECTION 19. Section 412:3-211, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) A proposed Hawaii financial institution shall obtain  
9 its required capital and surplus, complete its organization, and  
10 obtain a charter or license from the commissioner within one  
11 year from the date of [~~incorporation~~] issuance of the decision  
12 and order granting the application for preliminary approval to  
13 organize; provided that for good cause shown by the applicant in  
14 organization, the commissioner may by written order extend the  
15 deadline for a period not to exceed six months."

16 SECTION 20. Section 412:3-212, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§412:3-212 Final application for charter or license.** (a)  
19 After completing its organization of the Hawaii financial  
20 institution, the applicant in organization may file with the  
21 commissioner an application for a charter or license to engage  
22 in the business of a Hawaii financial institution. The



1 application shall be in a form prescribed by the commissioner  
2 and, unless waived by the commissioner, shall contain the  
3 following information:

4 (1) A sworn statement by the applicant in organization  
5 that it has complied with all requirements of law  
6 concerning the organization of the proposed financial  
7 institution, including but not limited to the  
8 requirement that the full amount of its required  
9 capital and surplus has been paid in or deposited in  
10 escrow under terms satisfactory to the commissioner;

11 (2) The names and addresses of all common and preferred  
12 shareholders, and elected or appointed directors and  
13 executive officers of the proposed financial  
14 institution and any holding company of the financial  
15 institution, and the number of shares owned by each;

16 (3) A description of any material changes which have  
17 occurred in the financial institution's organizers or  
18 the applicant in organization, its business plan, and  
19 its financial condition since the issuance of the  
20 preliminary approval to organize, accompanied by  
21 updated financial statements of the financial  
22 institution, any holding company of the financial





1 institution, the applicant in organization, and all  
2 executive officers and directors of the financial  
3 institution and any holding company of the financial  
4 institution;

5 (4) Evidence that all federal deposit insurance, fidelity  
6 bonds, and any other insurance [~~required by the order~~  
7 ~~of preliminary approval~~], as represented in the  
8 application for preliminary approval to organize, have  
9 been or will be obtained[+] and in effect prior to  
10 opening;

11 (5) A description of the financial institution's disaster  
12 recovery policies and programs, security programs, and  
13 all vending contractors for electronic data processing  
14 and servicing[+] that are or will be in effect prior  
15 to opening; and

16 (6) Any other information that the commissioner may  
17 require.

18 (b) The commissioner shall review the application, may  
19 conduct an examination of the financial institution, and may  
20 interview any proposed director or executive officer.

21 (c) If the commissioner is satisfied that the financial  
22 institution and, if applicable, its holding company have



1 fulfilled all the requirements of law[7] and the grounds for  
2 preliminary approval, and that the financial institution is  
3 qualified to engage in the business of a financial institution,  
4 the commissioner shall issue a written decision and order  
5 approving the application. The order may restrict the payment  
6 of dividends for a period of up to three years, and may contain  
7 any other conditions and restrictions on the financial  
8 institution that are in the public interest, including but not  
9 limited to the divestment of any contractual arrangement with an  
10 affiliate or subsidiary involving any type of business not  
11 permitted under this chapter. Upon [~~approving the application~~]  
12 the satisfactory fulfillment by the financial institution and,  
13 if applicable, its holding company, of the conditions in the  
14 written decision and order approving the application and upon  
15 the payment by a depository financial services loan company of  
16 an initial license fee established by rule pursuant to chapter  
17 91, the commissioner shall issue to the financial institution a  
18 charter or license to engage in the business of a financial  
19 institution under this chapter."

20 SECTION 21. Section 412:3-506, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§412:3-506 Opening or relocating [~~automatic teller~~**  
2 **~~machine or~~] support facility.** A Hawaii financial institution  
3 which opens or relocates [~~an automatic teller machine or~~] a  
4 support facility shall within thirty days thereafter submit a  
5 letter to the commissioner containing the following information:

- 6           (1) The location of the [~~automatic teller machine or~~]  
7           support facility;
- 8           (2) A description of the type of functions which the  
9           [~~automatic teller machine or~~] support facility will  
10          perform; and
- 11          (3) The date or anticipated date of opening or  
12          relocation."

13           SECTION 22. Section 412:3-508, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           **"§412:3-508 Closing [~~automatic teller machine or~~] support**  
16 **facility.** A Hawaii financial institution shall provide notice  
17 to the commissioner of its closure of [~~an automatic teller~~  
18 ~~machine or~~] a support facility within thirty days of the  
19 closing. The notice shall contain the location of the  
20 [~~automatic teller machine or~~] support facility closed and the  
21 date of closing."



1 SECTION 23. Section 412:3-604, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) For any transaction covered by this part which  
4 requires approval of the shareholders or members of the  
5 financial institution, the voting requirements shall be:

6 (1) If a Hawaii financial institution is a stock  
7 institution, the holders of two-thirds of each class  
8 of the issued and outstanding capital stock of the  
9 financial institution entitled to vote or such greater  
10 majority as may be provided by the articles of  
11 incorporation of the Hawaii financial institution  
12 shall be required to approve any action under this  
13 part;

14 [~~(2) If a Hawaii financial institution is a mutual savings  
15 and loan association, a majority of members present in  
16 person or by proxy at any meeting shall be required to  
17 approve any action under this part;~~] or

18 [~~(3)~~] (2) If a Hawaii financial institution is a credit  
19 union, a majority of members present in person at any  
20 meeting shall be required to approve any action under  
21 this part."



1 SECTION 24. Section 412:3-605, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§412:3-605 Notice to ~~[mutual savings and loan or]~~ credit  
4 union member~~[; no right of dissent]~~. ~~[(a)]~~ Wherever the  
5 approval of a transaction is required by this part by the  
6 members of a ~~[mutual savings and loan association or a]~~ credit  
7 union, notice of a ~~[+]meeting[+]~~ of its members, which may be an  
8 annual or a special ~~[+]meeting,[+]~~ shall be given to each member  
9 entitled to vote. The notice shall be provided not less than  
10 twenty days before the date of the meeting. The notice shall  
11 state that the purpose of the meeting is to vote upon a  
12 transaction covered by this part and shall be accompanied by a  
13 detailed description of the proposed transaction or a summary of  
14 the transaction and a copy of the plan of conversion, merger,  
15 consolidation, sale of assets or assumption of liabilities, or  
16 voluntary cessation of business and dissolution approved by the  
17 board of directors.

18 ~~[(b) A member of a mutual savings and loan association or~~  
19 ~~credit union shall have no right of dissent under chapter 414~~  
20 ~~for any of the transactions governed by this part.]"~~

21 SECTION 25. Section 412:3-608, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           **"§412:3-608 Conversion to another type of financial**  
2 **institution.** (a) A financial institution of any type, whether  
3 federal or State, may convert to a Hawaii financial institution of  
4 any other type if the institution and its holding company or  
5 holding companies, if any, shall have complied with all  
6 requirements, conditions, and limitations imposed by this part and  
7 by federal law, if applicable.

8           (b) If the converting institution is a Hawaii financial  
9 institution, its shareholders or members shall approve a  
10 conversion to another type of financial institution at a meeting  
11 duly called and noticed and upon a vote which satisfies the  
12 requirements of section 412:3-604.

13           (c) The financial institution shall file an application with  
14 the commissioner pursuant to section 412:3-603 for a charter or  
15 license to engage in the business of the type of financial  
16 institution to which it will convert. The application shall be  
17 accompanied by:

18           (1) A certificate signed by two executive officers of the  
19 financial institution, verifying the validity of the  
20 meeting of the shareholders or members, that the  
21 requisite vote has been obtained, and that the  
22 attached copy of the resolution to convert adopted at



1 the meeting is true and correct, or that the applicant  
2 has complied with all federal laws and regulations  
3 regarding the conversion, as the case may be;

4 (2) The information required from applicants for approval  
5 to organize a Hawaii financial institution of the type  
6 into which it will convert; and

7 (3) Any other information that the commissioner may  
8 require.

9 (d) The commissioner may require notice to be given to the  
10 public as may be deemed appropriate. The commissioner may conduct  
11 an examination of the institution as provided under article 2,  
12 part II. The cost of any examination shall be assessed against  
13 and paid by the institution pursuant to section 412:2-105.

14 (e) The charter or license shall be granted only if the  
15 commissioner is satisfied that the granting of the charter or  
16 license will not impair the safety or soundness of the financial  
17 institution or any other financial institution, and that the  
18 applicant meets all the requirements set forth in this chapter for  
19 the type of financial institution for which the application has  
20 been filed. The requirements shall include, but not be limited  
21 to, the appropriate location of offices, capital structure,  
22 business experience, the character of its executive officers and



1 directors and compliance with all applicable provisions of chapter  
2 414. If the resulting Hawaii financial institution is a new  
3 corporation to be formed under chapter 414, the director of  
4 commerce and consumer affairs shall not file the articles of  
5 incorporation until the application for a charter or license to  
6 engage in the business of the type of financial institution to  
7 which it will convert shall have been approved by the commissioner  
8 in writing. The commissioner may impose any restrictions and  
9 conditions on the operation of the resulting financial institution  
10 as the commissioner deems appropriate and consistent with federal  
11 law.

12 (f) If the resulting Hawaii financial institution is an  
13 existing corporation formed under chapter 414, the conversion  
14 shall be effective upon the effective date of the new charter or  
15 license granted by the commissioner after all provisions of this  
16 section and of federal law shall have been complied with in full.  
17 If the resulting Hawaii financial institution is a new corporation  
18 to be formed under chapter 414, the effective date of the new  
19 charter or license shall be the date of filing of the articles of  
20 incorporation by the director of commerce and consumer affairs.





1       ~~[(g) Nothing in this section shall be construed as~~  
2       ~~permitting the conversion of any financial institution to a~~  
3       ~~state chartered mutual savings and loan association.]"~~

4       SECTION 26. Section 412:3-609, Hawaii Revised Statutes, is  
5       amended by amending subsections (e), (f), (g), (h), (i), and (j)  
6       to read as follows:

7       "~~[(e) A Hawaii mutual savings and loan association may~~  
8       ~~merge into a Hawaii stock financial institution or a federal~~  
9       ~~financial institution whose operations are principally conducted~~  
10       ~~in this State, or may consolidate with a Hawaii stock financial~~  
11       ~~institution or a federal financial institution whose operations~~  
12       ~~are conducted principally in this State into a new resulting~~  
13       ~~institution; provided that the resulting institution shall be a~~  
14       ~~Hawaii stock financial institution or a federal financial~~  
15       ~~institution, and shall not be a Hawaii mutual savings and loan~~  
16       ~~association. The merger or consolidation shall be effected~~  
17       ~~pursuant to the procedures, conditions, and requirements for,~~  
18       ~~and with the effect of, the merger or consolidation of two or~~  
19       ~~more stock financial institutions pursuant to this section and~~  
20       ~~to chapter 414, as though the Hawaii mutual savings and loan~~  
21       ~~association was a stock financial institution; except that the~~  
22       ~~members of the participating Hawaii mutual savings and loan~~



1 ~~association shall approve the plan of merger or consolidation at~~  
2 ~~a meeting duly called and noticed and upon a vote which~~  
3 ~~satisfies the requirements of sections 412:3-604 and 412:3-605.~~  
4 ~~If the resulting institution is a Hawaii financial institution,~~  
5 ~~the director of commerce and consumer affairs shall not file~~  
6 ~~articles of merger or consolidation until the plan of merger or~~  
7 ~~consolidation shall have been approved by the commissioner in~~  
8 ~~writing. If the resulting institution is a federal financial~~  
9 ~~institution, the resulting federal financial institution shall~~  
10 ~~file with the director of commerce and consumer affairs a~~  
11 ~~confirmation in writing by the commissioner of the date and time~~  
12 ~~of the merger or consolidation, together with the appropriate~~  
13 ~~filing fee pursuant to chapter 414.~~

14 ~~(f)]~~ (e) A Hawaii credit union may merge with a Hawaii  
15 credit union or federal credit union. The merger shall be  
16 effected pursuant to the procedures, conditions, and  
17 requirements for, and with the effect of, the merger of two or  
18 more stock financial institutions pursuant to this section and  
19 to chapter 414, as though the credit unions were stock financial  
20 institutions; except that the plan of merger shall be approved  
21 by a majority of the members of the board of directors of each  
22 participating credit union and by the members of the



1 participating credit unions at a meeting duly called and noticed  
2 and upon a vote which satisfies the requirements of sections  
3 412:3-604 and 412:3-605.

4 [~~g~~] (f) Prior to or after the vote of the shareholders  
5 or members upon the plan of merger or consolidation, but prior  
6 to delivery of articles of merger or consolidation and plan of  
7 merger or consolidation to the director of commerce and consumer  
8 affairs, the participating financial institutions shall file an  
9 application with the commissioner pursuant to section 412:3-603  
10 for approval of the proposed merger or consolidation. The  
11 application shall be accompanied by:

- 12 (1) The plan of merger or consolidation;
- 13 (2) A certificate signed by two executive officers of each  
14 of the participating institutions, verifying that the  
15 plan of merger or consolidation has been approved by  
16 the board of directors of the participating financial  
17 institution and that the attached copy of the  
18 resolution approving the proposed merger or  
19 consolidation is true and correct;
- 20 (3) If any participating financial institution is a  
21 federal financial institution or a financial  
22 institution chartered or licensed under the laws of



1 any state other than this State, any possession or  
2 territory of the United States, or any foreign  
3 country, a certificate signed by two executive  
4 officers verifying that the financial institution has  
5 complied, or will comply with all federal laws and  
6 regulations or all laws and regulations of the  
7 jurisdiction under which it is chartered or licensed  
8 relating to the merger or consolidation;

9 (4) If the resulting financial institution is to be a  
10 Hawaii financial institution, the information required  
11 from applicants for approval to organize a Hawaii  
12 financial institution of the same type as the proposed  
13 resulting Hawaii financial institution;

14 (5) If a Hawaii financial institution is seeking to merge  
15 or consolidate with a financial institution of another  
16 type, the information required from applicants for  
17 approval to convert to another type of financial  
18 institution; and

19 (6) Any other information that the commissioner may  
20 require.

21 [~~h~~] (g) The commissioner may require notice to be given  
22 to the public as may seem appropriate. The commissioner may



1 conduct an examination of the institution as provided under  
2 article 2, part II. The cost of any examination shall be  
3 assessed against and paid by the institution pursuant to section  
4 412:2-105.

5 [~~(i)~~] (h) The commissioner shall approve the plan of  
6 merger or consolidation if it appears that:

- 7 (1) Any resulting Hawaii financial institution would meet  
8 all the requirements under this chapter for a charter  
9 or license to the same extent that it would if it were  
10 applying for a new charter or license;
- 11 (2) Any resulting financial institution would be  
12 adequately capitalized;
- 13 (3) The plan of merger or consolidation is fair to  
14 creditors and the shareholders or members of all  
15 participating institutions;
- 16 (4) The participating institutions have complied, or will  
17 comply, with all requirements, conditions, and  
18 limitations imposed by federal law or regulation or by  
19 the law or regulation of the jurisdiction under which  
20 an institution is chartered or licensed with respect  
21 to the merger or consolidation;



- 1           (5) The overall experience, moral character, or integrity  
2           of the proposed directors and executive officers of  
3           the resulting institution is consistent with the  
4           interests of the depositors, beneficiaries, creditors,  
5           shareholders, or members of the financial institution,  
6           or in the public interest;
- 7           (6) The merger or consolidation will not jeopardize the  
8           safety or soundness of any participating institutions  
9           or the resulting institution, and is not otherwise  
10          contrary to the public interest;
- 11          (7) The merger or consolidation will not substantially  
12          lessen competition or tend to create a monopoly or  
13          restraint of trade in any section of the country that  
14          includes this State or a part thereof, or that any  
15          anti-competitive effects are clearly outweighed in the  
16          public interest by the probable effect of the merger  
17          or consolidation in meeting the convenience and needs  
18          of the community to be served;
- 19          (8) The merger or consolidation will promote the  
20          convenience, needs, and advantage of the general  
21          public particularly in the communities in which the



1 participating and resulting financial institutions  
2 conduct or will conduct their business;

3 (9) The grounds for approval of a conversion to another  
4 type of financial institution pursuant to section  
5 412:3-608 have been met in the case of a participating  
6 Hawaii financial institution seeking to merge or  
7 consolidate with a financial institution of a  
8 different type; and

9 (10) The plan meets any other criteria as the commissioner  
10 may deem appropriate.

11 [~~(j)~~] (i) In the case of a merger, the charter or license  
12 of the participating depository financial institution or trust  
13 company which is the resulting institution shall continue as the  
14 charter or license of the resulting depository financial  
15 institution or trust company upon the effective date of the  
16 merger. In the case of a consolidation, when the commissioner  
17 is satisfied that the participating depository financial  
18 institutions or trust companies have complied with all state and  
19 federal law with regard to the consolidation, the commissioner  
20 shall issue a charter or license to the consolidated resulting  
21 Hawaii depository financial institution or trust company. A  
22 nondepository financial services loan company license may be



1 issued to the resulting financial institution in conjunction  
2 with a merger or consolidation upon compliance with all  
3 applicable laws regarding the issuance of a license to a  
4 nondepository financial services loan company."

5 SECTION 27. Section 412:3-610, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

7 "(d) If a converting or participating institution is a trust  
8 company or a bank which is authorized to do a trust business, the  
9 resulting institution, by operation of law and without further  
10 court order, transfer, substitution, act, or deed shall succeed to  
11 the rights, properties, assets, investments, deposits, demands,  
12 agreements, and trusts of the converting or participating  
13 institutions under all trusts, personal representations,  
14 executorships, administrations, guardianships, agencies, and all  
15 other fiduciary or representative capacities as though the  
16 resulting institution had originally assumed the same and shall  
17 succeed to and be entitled to take and execute the appointment to  
18 all trusteeships, personal representations, executorships,  
19 guardianships, conservatorships, and other fiduciary and  
20 representative capacities to which the converting or participating  
21 institution may be named or is thereafter named in wills, whether  
22 probated before or after the conversion, merger, or consolidation,





1 or to which it is or may be named or appointed by any other  
2 instrument."

3 SECTION 28. Section 412:3-611, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Unless the commissioner shall have given prior  
6 approval or shall have waived the requirement for approval  
7 pursuant to subsection [~~(e)~~] (e), no financial institution  
8 holding company shall merge or consolidate with any other  
9 corporation if the effect of the merger or consolidation shall  
10 be to change the direct or indirect control of any Hawaii  
11 financial institution."

12 SECTION 29. Section 412:3-612, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14 "(e) [~~The~~] Approval may be denied by the commissioner [~~may~~  
15 ~~disapprove the proposed acquisition of control~~] for the proposed  
16 acquisition of control if it appears that:

17 (1) The overall experience, moral character, or integrity  
18 of any person who would acquire control of a Hawaii  
19 financial institution or financial institution holding  
20 company or become a financial institution holding  
21 company indicates that it would not be in the interest  
22 of the depositors, beneficiaries, creditors, or



1 shareholders of the Hawaii financial institution or  
2 the financial institution holding company, or in the  
3 public interest, to permit the person to control the  
4 Hawaii financial institution or the financial  
5 institution holding company or to become a financial  
6 institution holding company;

7 (2) The acquisition will not promote the convenience,  
8 needs, and advantage of the general public,  
9 particularly in the community in which the affected  
10 institution conducts its business;

11 (3) The effect of the proposed acquisition may be  
12 substantially to lessen competition or tend to create  
13 a monopoly or restraint of trade in any section of the  
14 country that includes this State or a part thereof,  
15 and that these anti-competitive effects are not  
16 clearly outweighed in the public interest by the  
17 probable effect of the acquisition in meeting the  
18 convenience and needs of the community to be served;

19 (4) The financial condition of any person who would  
20 acquire control of a Hawaii financial institution or a  
21 financial institution holding company or become a  
22 financial institution holding company may jeopardize



1 the safety and soundness of the Hawaii financial  
2 institution or the financial institution holding  
3 company or prejudice the interests of the depositors,  
4 beneficiaries, creditors, or shareholders of the  
5 Hawaii financial institution or the financial  
6 institution holding company;

7 (5) Any plan or proposal to liquidate, merge, or  
8 consolidate, or make any other major change in the  
9 business, corporate structure, or management of the  
10 Hawaii financial institution or the financial  
11 institution holding company or any of its significant  
12 subsidiaries is not fair and reasonable to the  
13 depositors, beneficiaries, creditors, or shareholders  
14 of the Hawaii financial institution or the financial  
15 institution holding company or any of its significant  
16 subsidiaries; or

17 (6) The acquiring person has failed or refused to furnish  
18 information requested by the commissioner."

19 SECTION 30. Section 412:5-203, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§412:5-203 Operating subsidiaries.** (a) "Operating  
22 subsidiary" means a corporation other than a corporation



1 referred to in section 412:5-305(g)(2) to (8) of which more than  
2 eighty per cent of the voting securities is held by a bank.

3 (b) An operating subsidiary may engage in activities which  
4 are authorized for a bank or which are usual or incidental to  
5 the business of a bank.

6 (c) No bank may acquire, establish, or hold the voting  
7 securities of an operating subsidiary without the commissioner's  
8 prior written approval; provided[7] that such approval shall not  
9 be required so long as the bank's aggregate net contributions to  
10 the capital of the operating subsidiary remain less than ten per  
11 cent of the bank's capital and surplus; provided further[7] that  
12 the bank shall comply with the notification requirements of  
13 subsection (f). Unless otherwise provided by law or rule, all  
14 provisions of this chapter applicable to the operations of the  
15 parent bank shall be applicable to the operations of its  
16 operating subsidiary. Unless otherwise provided by law or rule,  
17 pertinent accounts of the parent bank and its operating  
18 subsidiaries shall be consolidated for the purpose of applying  
19 applicable statutory limitations such as contained in section  
20 412:5-302.

21 (d) The bank shall file an application with the  
22 commissioner in a form approved by the commissioner. The



1 application shall be accompanied by a fee the amount of which  
2 shall be prescribed by rule. The application shall contain the  
3 following information concerning the proposed operating  
4 subsidiary:

5 (1) The name and date for commencement of operations;

6 (2) The specific location;

7 (3) The activities and nature of business;

8 (4) The ownership, amount, and nature of the investment;

9 and

10 (5) Any other information that the commissioner may  
11 require.

12 (e) If after appropriate examination and investigation,  
13 the commissioner is satisfied that the acquisition,  
14 establishment, or holding the voting securities of the operating  
15 subsidiary will comply with this section, the commissioner shall  
16 approve [~~such~~] the application in writing, with [~~such~~]  
17 conditions as the commissioner may deem appropriate.

18 (f) The bank shall notify the commissioner in writing  
19 within five days of acquiring or establishing an operating  
20 subsidiary or performing new activities in the operating  
21 subsidiary. The notification shall provide the information  
22 specified in subsection (d).



1 (g) The accounts of each operating subsidiary of a bank  
2 shall be maintained independently of the accounts of all of the  
3 bank's other operating subsidiaries, and independently of the  
4 accounts of the bank itself. At least at the end of every  
5 quarter of its fiscal year the bank shall consolidate or  
6 recognize its proportionate share of the profit and loss from  
7 each operating subsidiary.

8 (h) The bank shall notify the commissioner in writing  
9 within five days of closing an operating subsidiary. The  
10 notification shall provide the date of closing, the reasons for  
11 the closure, and the means by which the assets and liabilities  
12 of the operating subsidiary were disposed."

13 SECTION 31. Section 412:5-305, Hawaii Revised Statutes, is  
14 amended by amending subsection (h) to read as follows:

15 "(h) To the extent specified herein, a bank may invest its  
16 own assets in limited partnerships, limited liability  
17 partnerships, limited liability companies, or corporations formed  
18 to invest in residential properties which will qualify for the low  
19 income housing tax credit under section 42 of the Internal Revenue  
20 Code of 1986, as amended, and under chapters 235 and 241; provided  
21 that the total amount invested by a bank under this subsection in  
22 any one limited partnership, limited liability partnership,



1 limited liability company, or corporation shall not, without the  
2 prior approval of the commissioner, exceed two per cent of the  
3 bank's capital and surplus and the aggregate amount invested under  
4 this subsection shall not, without the prior approval of the  
5 commissioner, exceed five per cent of the bank's capital and  
6 surplus. In no case shall the aggregate amount invested by a bank  
7 under this subsection exceed ten per cent of the bank's capital  
8 and surplus."

9 SECTION 32. Section 412:5-402, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) In order to obtain prior approval of the  
12 commissioner, the applicant shall file the application required  
13 by and comply with the provisions of article 3. [~~In addition to~~  
14 ~~any information required under article 3, the]~~ The application  
15 shall contain the following information:

16 (1) The applicant's articles of incorporation and bylaws,  
17 or other basic governing documents; [~~and]~~

18 (2) A certificate from the appropriate regulatory body  
19 where its home office is located, indicating that the  
20 applicant is in good standing in that jurisdiction[~~-~~];  
21 and

22 (3) Any other information required by the commissioner."



1 SECTION 33. Section 412:6-203, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§412:6-203 Service corporations.** (a) "Service  
4 corporation" means a corporation whose stock is owned entirely  
5 by one or more state or federally chartered savings banks or  
6 savings and loan associations.

7 (b) Subject to the approval of the commissioner, a savings  
8 bank may form and own a service corporation only if the  
9 institution or institutions participating in the formation of  
10 the corporation are in a safe and sound condition, and the  
11 amount of stock to be owned by each will not adversely affect  
12 their capital or solvency.

13 (c) A savings bank may not own or invest in any capital  
14 stock, securities, or other interest of a service corporation  
15 if, together with its investment in the capital stock,  
16 securities, or other interest of any other service corporations,  
17 its aggregate outstanding investment in all service corporations  
18 will exceed six per cent of the savings bank's assets.

19 (d) No service corporation may be formed except upon  
20 written approval by the commissioner of an application submitted  
21 in a form satisfactory to the commissioner. The approval shall  
22 be subject to the written acknowledgement by the applicant that





1 the service corporation shall be subject to: (1) the supervision  
2 of the commissioner; (2) examination pursuant to this section;  
3 and (3) [~~such~~] other terms and conditions as the commissioner  
4 deems appropriate.

5 (e) Every service corporation shall permit the  
6 commissioner to examine its books, records, and activities from  
7 time to time, to the extent and whenever the commissioner deems  
8 necessary to determine the propriety of any investment by a  
9 savings bank in such corporation and whether the activities of  
10 the corporation pose a significant risk of loss to the parent  
11 savings bank. The corporation shall pay the entire cost of such  
12 examination. In addition, a service corporation, at its sole  
13 expense, shall cause an independent audit to be made of its  
14 books, records, and activities if and when deemed necessary by  
15 the commissioner.

16 (f) A service corporation may engage in activities  
17 permitted for a service corporation of a federally chartered  
18 savings bank or savings and loan association and [~~such~~] other  
19 activities as the commissioner may approve.

20 (g) A service corporation may engage in permitted  
21 activities directly or through one or more subsidiaries or joint  
22 ventures.



1 (h) Whenever a service corporation engages in an activity  
2 which is not permitted under this section, and because of [~~such~~]  
3 this activity a savings bank's investment in the service  
4 corporation would be improper, within ninety days following  
5 written notice from the commissioner to the savings bank: (1)  
6 the improper activity shall be discontinued; or (2) the savings  
7 bank shall divest itself of its ownership or investment in the  
8 service corporation. The service corporation or the savings  
9 bank may appeal the commissioner's decision and request a  
10 hearing in accordance with chapter 91.

11 (i) The savings bank shall notify the commissioner in  
12 writing within five days of closing a service corporation. The  
13 notification shall provide the date of closing, the reasons for  
14 the closure, and the means by which the assets and liabilities  
15 of the service corporation were disposed."

16 SECTION 34. Section 412:6-204, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§412:6-204 Operating subsidiaries.** (a) "Operating  
19 subsidiary" means a corporation other than a corporation  
20 referred to in section 412:6-306(g) (2) to (7) of which more than  
21 fifty per cent of the voting securities is held by a savings  
22 bank.



1 (b) An operating subsidiary may engage in activities which  
2 are authorized for a savings bank or which are usual or  
3 incidental to the business of a savings bank.

4 (c) No savings bank may acquire, establish, or hold the  
5 voting securities of an operating subsidiary without the  
6 commissioner's prior written approval; provided[7] that [~~such~~]  
7 approval shall not be required so long as the savings bank's  
8 aggregate net contributions to the capital of the operating  
9 subsidiary remain less than ten per cent of the savings bank's  
10 capital and surplus; provided further[7] that the savings bank  
11 shall comply with the notification requirements of subsection  
12 (f). Unless otherwise provided by law or rule, all provisions  
13 of this chapter applicable to the operations of the parent  
14 savings bank shall be applicable to the operations of its  
15 operating subsidiary. Unless otherwise provided by law or rule,  
16 pertinent accounts of the parent savings bank and its operating  
17 subsidiaries shall be consolidated for the purpose of applying  
18 applicable statutory limitations such as contained in section  
19 412:6-303.

20 (d) The savings bank shall file an application with the  
21 commissioner in a form approved by the commissioner. The  
22 application shall be accompanied by a fee, the amount of which



1 shall be prescribed by rule. The application shall contain the  
2 following information concerning the proposed operating  
3 subsidiary:

4 (1) The name and date for commencement of operations;

5 (2) The specific location;

6 (3) The activities and nature of business;

7 (4) The ownership, amount, and nature of the investment;

8 and

9 (5) Any other information that the commissioner may  
10 require.

11 (e) If after appropriate examination and investigation,  
12 the commissioner is satisfied that the acquisition,  
13 establishment, or holding the voting securities of the operating  
14 subsidiary will comply with this section, the commissioner shall  
15 approve [~~such~~] the application in writing, with [~~such~~]  
16 conditions as the commissioner may deem appropriate.

17 (f) The savings bank shall notify the commissioner in  
18 writing within five days of acquiring or establishing any  
19 operating subsidiary or performing new activities in the  
20 operating subsidiary. The notification shall provide the  
21 information specified in subsection (d).



1 (g) The accounts of each operating subsidiary of a savings  
2 bank shall be maintained independently of the accounts of all of  
3 the savings bank's other operating subsidiaries and  
4 independently of the accounts of the savings bank itself. At  
5 least at the end of every quarter of its fiscal year the savings  
6 bank shall consolidate or recognize its proportionate share of  
7 the profit and loss from each operating subsidiary.

8 (h) The savings bank shall notify the commissioner in  
9 writing within five days of closing an operating subsidiary.  
10 The notification shall provide the date of closing, the reasons  
11 for the closure, and the means by which the assets and  
12 liabilities of the operating subsidiary were disposed."

13 SECTION 35. Section 412:6-306, Hawaii Revised Statutes, is  
14 amended by amending subsection (h) to read as follows:

15 "(h) To the extent specified herein, a savings bank may  
16 invest its own assets in limited partnerships, limited liability  
17 partnerships, limited liability companies, or corporations  
18 formed to invest in residential properties which will qualify  
19 for the low income housing tax credit under section 42 of the  
20 Internal Revenue Code of 1986, as amended, and under chapters  
21 235 and 241; provided that the total amount invested by a  
22 savings bank under this subsection in any one limited



1 partnership, limited liability partnership, limited liability  
2 company, or corporation shall not, without the prior approval of  
3 the commissioner, exceed two per cent of the savings bank's  
4 capital and surplus and the aggregate amount invested under this  
5 subsection shall not, without the prior approval of the  
6 commissioner, exceed five per cent of the savings bank's capital  
7 and surplus. In no case shall the aggregate amount invested by  
8 a savings bank under this subsection exceed ten per cent of the  
9 savings bank's capital and surplus."

10 SECTION 36. Section 412:7-100, Hawaii Revised Statutes is  
11 amended to read as follows:

12 "**§412:7-100 Definition.** In this article, "savings and  
13 loan association" means a corporation [~~or mutual association~~]  
14 which has the authority to operate as a savings and loan  
15 association under this chapter."

16 SECTION 37. Section 412:7-203, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§412:7-203 Service corporations.** (a) "Service  
19 corporation" means a corporation whose stock is owned entirely  
20 by one or more state or federally chartered savings and loan  
21 associations or savings banks.



1           (b) Subject to the approval of the commissioner, a savings  
2 and loan association may form and own a service corporation only  
3 if the institution or institutions participating in the  
4 formation of the corporation are in a safe and sound condition,  
5 and the amount of stock to be owned by each will not adversely  
6 affect their capital or solvency.

7           (c) A savings and loan association may not own or invest  
8 in any capital stock, securities, or other interest of a service  
9 corporation if, together with its investment in the capital  
10 stock, securities, or other interest of any other service  
11 corporations, its aggregate outstanding investment in all  
12 service corporations will exceed six per cent of the savings and  
13 loan association's assets.

14           (d) No service corporation may be formed except upon  
15 written approval by the commissioner of an application submitted  
16 in a form satisfactory to the commissioner. The approval shall  
17 be subject to the written acknowledgement by the applicant that  
18 the service corporation shall be subject to: (1) the supervision  
19 of the commissioner; (2) examination pursuant to this section;  
20 and (3) [such] other terms and conditions as the commissioner  
21 deems appropriate.



1           (e) Every service corporation shall permit the  
2 commissioner to examine its books, records, and activities from  
3 time to time, to the extent and whenever the commissioner deems  
4 necessary to determine the propriety of any investment by a  
5 savings and loan association in [~~such~~] the corporation and  
6 whether the activities of the corporation pose a significant  
7 risk of loss to the parent savings and loan association. The  
8 corporation shall pay the entire cost of such examination. In  
9 addition, a service corporation, at its sole expense, shall  
10 cause an independent audit to be made of its books, records, and  
11 activities if and when deemed necessary by the commissioner.

12           (f) A service corporation may engage in activities  
13 permitted for a service corporation of a federally chartered  
14 savings and loan association and [~~such~~] other activities as the  
15 commissioner may approve.

16           (g) A service corporation may engage in permitted  
17 activities directly or through one or more subsidiaries or joint  
18 ventures.

19           (h) Whenever a service corporation engages in an activity  
20 which is not permitted under this section, and because of [~~such~~]  
21 the activity a savings and loan association's investment in the  
22 service corporation would be improper, within ninety days





1 following written notice from the commissioner to the savings  
2 and loan association: (1) the improper activity shall be  
3 discontinued; or (2) the savings and loan association shall  
4 divest itself of its ownership or investment in the service  
5 corporation. The service corporation or the savings and loan  
6 association may appeal the commissioner's decision and request a  
7 hearing in accordance with chapter 91.

8 (i) The savings and loan association shall notify the  
9 commissioner in writing within five days of closing a service  
10 corporation. The notification shall provide the date of closing,  
11 the reasons for the closure, and the means by which the assets  
12 and liabilities of the service corporation were disposed."

13 SECTION 38. Section 412:7-204, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§412:7-204 Operating subsidiaries.** (a) "Operating  
16 subsidiary" means a corporation other than a corporation  
17 referred to in section 412:7-306(g)(2) to (7) of which more than  
18 fifty per cent of the voting securities is held by a savings and  
19 loan association.

20 (b) An operating subsidiary may engage in activities which  
21 are authorized for a savings and loan association or which are



1 usual or incidental to the business of a savings and loan  
2 association.

3 (c) No savings and loan association may acquire,  
4 establish, or hold the voting securities of an operating  
5 subsidiary without the commissioner's prior written approval;  
6 provided[7] that [~~such~~] approval shall not be required so long  
7 as the savings and loan association's aggregate net  
8 contributions to the capital of the operating subsidiary remain  
9 less than ten per cent of the savings and loan association's  
10 capital and surplus; provided further[7] that the savings and  
11 loan association shall comply with the notification requirements  
12 of subsection (f). Unless otherwise provided by law or rule,  
13 all provisions of this chapter applicable to the operations of  
14 the parent savings and loan association shall be applicable to  
15 the operations of its operating subsidiary. Unless otherwise  
16 provided by law or rule, pertinent accounts of the parent  
17 savings and loan association and its operating subsidiaries  
18 shall be consolidated for the purpose of applying applicable  
19 statutory limitations such as contained in section 412:7-303.

20 (d) The savings and loan association shall file an  
21 application with the commissioner in a form approved by the  
22 commissioner. The application shall be accompanied by a fee the



1 amount of which shall be prescribed by rule. The application  
2 shall contain the following information concerning the proposed  
3 operating subsidiary:

4 (1) The name and date for commencement of operations;

5 (2) The specific location;

6 (3) The activities and nature of business;

7 (4) The ownership, amount, and nature of the investment;

8 and

9 (5) Any other information that the commissioner may

10 require.

11 (e) If after appropriate examination and investigation,

12 the commissioner is satisfied that the acquisition,

13 establishment, or holding the voting securities of the operating

14 subsidiary will comply with this section, the commissioner shall

15 approve ~~such~~ the application in writing, with ~~such~~

16 conditions as the commissioner may deem appropriate.

17 (f) The savings and loan association shall notify the

18 commissioner in writing within five days of acquiring or

19 establishing any operating subsidiary or performing new

20 activities in the operating subsidiary. The notification shall

21 provide the information specified in subsection (d).



1 (g) The accounts of each operating subsidiary of a savings  
2 and loan association shall be maintained independently of the  
3 accounts of all of the savings and loan association's other  
4 operating subsidiaries and independently of the accounts of the  
5 savings and loan association itself. At least at the end of  
6 every quarter of its fiscal year the savings and loan  
7 association shall consolidate or recognize its proportionate  
8 share of the profit and loss from each operating subsidiary.

9 (h) The savings and loan association shall notify the  
10 commissioner in writing within five days of closing an operating  
11 subsidiary. The notification shall provide the date of closing,  
12 the reasons for the closure, and the means by which the assets  
13 and liabilities of the operating subsidiary were disposed."

14 SECTION 39. Section 412:7-306, Hawaii Revised Statutes, is  
15 amended by amending subsection (h) to read as follows:

16 "(h) To the extent specified herein, a savings and loan  
17 association may invest its own assets in limited partnerships,  
18 limited liability partnerships, limited liability companies, or  
19 corporations formed to invest in residential properties which  
20 will qualify for the low income housing tax credit under section  
21 42 of the Internal Revenue Code of 1986, as amended, and under  
22 chapters 235 and 241; provided that the total amount invested by



1 a savings and loan association under this subsection in any one  
 2 limited partnership, limited liability partnership, limited  
 3 liability company, or corporation shall not, without the prior  
 4 approval of the commissioner, exceed two per cent of the savings  
 5 and loan association's capital and surplus and the aggregate  
 6 amount invested under this subsection shall not, without the  
 7 prior approval of the commissioner, exceed five per cent of the  
 8 savings and loan association's capital and surplus. In no case  
 9 shall the aggregate amount invested by a savings and loan  
 10 association under this subsection exceed ten per cent of the  
 11 savings and loan association's capital and surplus."

12 SECTION 40. Section 412:8-201, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14 "**§412:8-201 Fiduciary powers.** Every trust company shall  
 15 have the power and authority to serve as a trustee, personal  
 16 representative, conservator, assignee for the benefit of others,  
 17 or receiver, subject to the duties imposed by the instrument or  
 18 by law. As used herein, the term "instrument" means any trust  
 19 agreement, declaration, or other agreement, any valid will, or  
 20 any court order or decree in any probate, guardianship,  
 21 conservatorship, or receivership. Pursuant thereto, a trust

1 company is authorized and empowered to exercise powers as  
2 provided by law, including, but not limited to:

- 3 (1) Perform such acts as may be prudent, consistent with,  
4 and reasonably necessary to carry out the legitimate  
5 purposes of such instrument;
- 6 (2) Administer, fulfill, and discharge all lawful duties  
7 imposed by instrument or by law, for such remuneration  
8 as may be agreed upon or provided by law;
- 9 (3) Acquire principal and income on behalf of the estate  
10 administered by the trust company, including without  
11 limitation real property, insurance proceeds, rents,  
12 interest, dividends, mortgages, bonds, bills, notes,  
13 and securities;
- 14 (4) Buy, sell, issue, negotiate, register, transfer, or  
15 countersign certificates of stock, bonds, or other  
16 obligations of any corporation, association, or  
17 municipality;
- 18 (5) Lease, purchase, hold, and convey real and personal  
19 property to the extent authorized by the instrument or  
20 by law, or consistent with the purposes thereof; and
- 21 (6) Execute and issue on behalf of the estate any  
22 documents necessary to the prudent administration



1           thereof, including without limitation any receipts,  
2           certificates, papers, and contracts which shall be  
3           signed by an appropriate trust officer designated by  
4           the trust company."

5           SECTION 41. Section 412:9-403, Hawaii Revised Statutes, is  
6           amended to read as follows:

7           "**§412:9-403 Service corporations.** Subject to the approval  
8           of the commissioner, one or more depository financial services  
9           loan companies, may form and own a service corporation only  
10          under the following conditions:

11          (1) The depository financial services loan company or  
12          companies participating in the formation of the  
13          service corporation are in and will remain in a safe  
14          and sound condition, and the depository financial  
15          services loan company's or companies' solvency will  
16          not be adversely affected by the formation or  
17          ownership of the service corporation;

18          (2) A depository financial services loan company may not  
19          own or invest in any capital stock, securities, or  
20          other interest of a service corporation if, together  
21          with its investment in the capital stock, securities,  
22          or other interest of any other service corporations,



1 its aggregate outstanding investment in all service  
2 corporations will exceed fifty per cent of the  
3 depository financial services loan company's capital  
4 and surplus;

5 (3) No service corporation may be formed except upon  
6 written approval by the commissioner of an application  
7 submitted in a form satisfactory to the commissioner.  
8 The approval shall be subject to the written  
9 acknowledgment by the applicant that the service  
10 corporation shall be subject to: (A) the supervision  
11 of the commissioner; (B) examination pursuant to this  
12 section; and (C) [~~such~~] other terms and conditions as  
13 the commissioner deems appropriate;

14 (4) Every service corporation shall permit the  
15 commissioner to examine its books, records, and  
16 activities from time to time, to the extent and  
17 whenever the commissioner deems necessary to determine  
18 the propriety of any investment by a depository  
19 financial services loan company in [~~such~~] the service  
20 corporation and whether the activities of the service  
21 corporation pose a significant risk of loss to the  
22 parent depository financial services loan company.



1 The service corporation shall pay the entire cost of  
2 the examination. In addition, a service corporation,  
3 at its sole expense, shall cause an independent audit  
4 to be made of its books, records, and activities if  
5 and when deemed necessary by the commissioner;

6 (5) A service corporation may engage in any activity  
7 permitted to its parent depository financial services  
8 loan company and any other activity as the  
9 commissioner may approve;

10 (6) A service corporation may engage in permitted  
11 activities directly or through one or more  
12 subsidiaries or joint ventures; [~~and~~]

13 (7) Whenever a service corporation engages in an activity  
14 which is not permitted under this section, and because  
15 of [~~such~~] the activity a depository financial services  
16 loan company's investment in the service corporation  
17 would be improper, within ninety days following  
18 written notice from the commissioner to the depository  
19 financial services loan company: (A) the improper  
20 activity shall be discontinued; or (B) the depository  
21 financial services loan company shall divest itself of  
22 its ownership or investment in the service



1 corporation. The service corporation or the  
2 depository financial services loan company may appeal  
3 the commissioner's decision and request a hearing in  
4 accordance with chapter 91[-]; and

5 (8) The depository financial services loan company shall  
6 notify the commissioner in writing within five days of  
7 closing a service corporation. The notification shall  
8 provide the date of closing, the reasons for the  
9 closure, and the means by which the assets and  
10 liabilities of the service corporation were disposed."

11 SECTION 42. Section 412:9-409, Hawaii Revised Statutes, is  
12 amended by amending subsection (i) to read as follows:

13 "(i) To the extent specified herein, a depository  
14 financial services loan company may invest its own assets in  
15 limited partnerships, limited liability partnerships, limited  
16 liability companies, or corporations formed to invest in  
17 residential properties which will qualify for the low income  
18 housing tax credit under section 42 of the Internal Revenue Code  
19 of 1986, as amended, and under chapters 235 and 241; provided  
20 that the total amount invested by a depository financial  
21 services loan company under this subsection in any one limited  
22 partnership, limited liability partnership, limited liability



1 company, or corporation shall not, without the prior approval of  
2 the commissioner, exceed two per cent of the depository  
3 financial services loan company's capital and surplus and the  
4 aggregate amount invested under this subsection shall not,  
5 without the prior approval of the commissioner, exceed five per  
6 cent of the depository financial services loan company's capital  
7 and surplus. In no case shall the aggregate amount invested by  
8 a depository financial services loan company under this  
9 subsection exceed ten per cent of the depository financial  
10 services loan company's capital and surplus."

11 SECTION 43. Section 412:11-103, Hawaii Revised Statutes,  
12 is amended to read as follows:

13 "**§412:11-103 Use of state or federal examinations.** The  
14 commissioner may accept, adopt, or use in lieu of an examination  
15 prescribed by section 412:11-102 or otherwise, all or any part  
16 of the results of an examination conducted by an appropriate  
17 state or federal regulatory agency of a financial institution or  
18 a financial institution holding company for the same period or  
19 subject matter that would be covered by an examination required  
20 or permitted under this article."

21 SECTION 44. Section 412:3-103, Hawaii Revised Statutes, is  
22 repealed.



1           ~~["§412:3-103 Amendments to articles and bylaws. Upon the~~  
2 ~~adoption of any amendment to the articles of incorporation or~~  
3 ~~association or to the bylaws of a Hawaii financial institution,~~  
4 ~~the secretary or other authorized officer of the financial~~  
5 ~~institution shall file a copy of the amendment to the articles~~  
6 ~~or bylaws with the commissioner, certifying that the copy is~~  
7 ~~true and correct, the date the amendment was adopted, and that~~  
8 ~~the amendment was duly adopted in accordance with the applicable~~  
9 ~~provisions of the articles and bylaws. The articles and bylaws~~  
10 ~~and any amendments thereof shall be kept on file by the~~  
11 ~~division." ]~~

12           SECTION 45. Section 412:3-113, Hawaii Revised Statutes, is  
13 repealed.

14           ~~["§412:3-113 Availability of statement of assets and~~  
15 ~~liabilities. Unless extended by the commissioner, within ten~~  
16 ~~days after submission to the commissioner of its June 30 and~~  
17 ~~December 31 financial statements, every Hawaii financial~~  
18 ~~institution, except a nondepository financial services loan~~  
19 ~~company or credit union, shall file with the commissioner its~~  
20 ~~statement of assets and liabilities which can readily be~~  
21 ~~provided to the public. The statement shall be in a form~~  
22 ~~prescribed by the commissioner and shall be prepared in~~



1 ~~accordance with section 412:3-108. The statement of assets and~~  
2 ~~liabilities shall be made available to the public by the~~  
3 ~~institution until the subsequent statement becomes available." ]~~

4 SECTION 46. Section 412:3-115, Hawaii Revised Statutes, is  
5 repealed.

6 ~~["**§412:3-115 Access to safety deposit box.** Unless~~  
7 ~~otherwise provided for in the lease for a safety deposit box,~~  
8 ~~access to the safety deposit box leased or rented to one or more~~  
9 ~~persons may be permitted by a financial institution to any~~  
10 ~~person leasing or renting the safety deposit box, including any~~  
11 ~~person purporting to be the personal representative, authorized~~  
12 ~~agent, guardian, trustee or other fiduciary for the lessee or~~  
13 ~~renter of the safety deposit box. The provisions of this~~  
14 ~~section shall be applicable even though the name of the person~~  
15 ~~appearing on the financial institution's records as the lessee~~  
16 ~~or renter is modified by a qualifying or descriptive term such~~  
17 ~~as agent or trustee or other word or phrase indicating that the~~  
18 ~~person may not be the lessee or renter of the safety deposit box~~  
19 ~~in their own right. No financial institution shall be liable~~  
20 ~~for any damages or penalty for allowing or refusing access to or~~  
21 ~~removal of the contents of the safety deposit box under the~~  
22 ~~provisions of this section." ]~~



1 SECTION 47. Section 412:3-208, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§412:3-208 Approval of articles and bylaws. (a) Within~~  
4 ~~sixty days after receiving preliminary approval to organize, the~~  
5 ~~applicant in organization shall file with the commissioner the~~  
6 ~~proposed articles of incorporation and bylaws of the Hawaii~~  
7 ~~financial institution. Within sixty days thereafter, the~~  
8 ~~commissioner shall deny, approve or issue a statement of no~~  
9 ~~objection to the articles and bylaws.~~

10 ~~(b) The articles of incorporation shall comply in all~~  
11 ~~respects with chapter 414.~~

12 ~~(c) If there has been no disapproval by the commissioner,~~  
13 ~~the articles of incorporation may be delivered by the applicant~~  
14 ~~in organization to the director of commerce and consumer affairs~~  
15 ~~for filing, and if accepted for filing, the financial~~  
16 ~~institution shall have corporate existence.~~

17 ~~(d) Although the proposed financial institution may have~~  
18 ~~corporate existence, it may not transact any financial~~  
19 ~~institution business until it has received a financial~~  
20 ~~institution charter or license under this article; provided that~~  
21 ~~the financial institution may conduct any transaction that is~~



1 ~~incidental and necessary to prepare to do a financial~~  
2 ~~institution business and obtain a charter or license." ]~~

3 SECTION 48. Section 412:3-210, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["§412:3-210 Approval of capital stock solicitation. (a)~~  
6 ~~The applicant in organization and the proposed Hawaii financial~~  
7 ~~institution shall not solicit subscriptions for the capital~~  
8 ~~stock of the Hawaii financial institution without written~~  
9 ~~approval of the commissioner.~~

10 ~~(b) An application under this section may be filed before~~  
11 ~~or after the applicant's articles of incorporation and bylaws~~  
12 ~~have been approved by the commissioner; provided that the~~  
13 ~~applicant in organization and the proposed financial institution~~  
14 ~~shall not solicit subscriptions for capital stock until the~~  
15 ~~articles of incorporation and bylaws of the proposed financial~~  
16 ~~institution shall have been approved by the commissioner. An~~  
17 ~~applicant in organization seeking approval of a capital stock~~  
18 ~~solicitation shall pay a fee established by the commissioner~~  
19 ~~pursuant to section 412:2-105, and shall file an application~~  
20 ~~which contains the following:~~

21 ~~(1) Information regarding the solicitation plan by which~~  
22 ~~the applicant in organization and the proposed~~



1           ~~financial institution proposes to conduct the~~  
2           ~~solicitation of subscribers;~~

3           ~~(2) Information regarding the classes of shares,~~  
4           ~~respective quantities of shares for each class, and~~  
5           ~~the subscription price of each class of stock;~~

6           ~~(3) A specimen subscription contract or purchase~~  
7           ~~agreement, suitability certificates and other related~~  
8           ~~documents to be executed by subscribers;~~

9           ~~(4) Any underwriting agreement or other agreement for the~~  
10           ~~purchase or distribution of the capital stock;~~

11           ~~(5) Any escrow agreements or other agreement for the~~  
12           ~~holding of the purchase proceeds of the capital stock;~~

13           ~~(6) Proposed advertising materials;~~

14           ~~(7) If the offer and sale of the capital stock is subject~~  
15           ~~to the Securities Act of 1933 and regulations~~  
16           ~~thereunder, a copy of the registration statement most~~  
17           ~~recently filed with the federal Securities and~~  
18           ~~Exchange Commission or any other notices or other~~  
19           ~~filings in lieu of registration required or permitted~~  
20           ~~by that Act or regulation and any subsequent~~  
21           ~~amendments thereto;~~





1       ~~(8) If the offer and sale of the capital stock is subject~~  
2       ~~to chapter 485, a copy of the registration or~~  
3       ~~qualification statement most recently filed with the~~  
4       ~~commissioner of securities and any subsequent~~  
5       ~~amendments thereto;~~

6       ~~(9) If the offer and sale of the capital stock is not~~  
7       ~~subject to the Securities Act of 1933 or chapter 485,~~  
8       ~~whether exempted by law or regulation or otherwise, a~~  
9       ~~copy of the most recent version of any prospectus,~~  
10       ~~offering memorandum, offering circular, or other~~  
11       ~~offering document proposed to be delivered to~~  
12       ~~prospective subscribers to the capital stock, and any~~  
13       ~~subsequent amendments thereto; and~~

14       ~~(10) Any other information that the commissioner may~~  
15       ~~require.~~

16       ~~(c) Upon being satisfied that the application for approval~~  
17       ~~of the capital stock solicitation is complete and that the~~  
18       ~~solicitation will not affect the safety or soundness of the~~  
19       ~~proposed financial institution or harm the public interest, the~~  
20       ~~commissioner shall approve the application. The approval shall~~  
21       ~~not constitute a determination that the applicant has complied~~  
22       ~~with chapter 485 or any other state or federal law." ]~~



1 SECTION 49. Chapter 412, article 7, part IV, Hawaii  
2 Revised Statutes, is repealed.

3 SECTION 50. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 51. This Act shall take effect on January 1, 2007.



**Report Title:**

Financial Institutions; Licensing and Regulation

**Description:**

Eliminates obsolete requirements and improves the procedures for the licensing and regulation of financial institutions by the Division of Financial Institutions. (SD1)

