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# 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 241-1, Hawaii Revised Statutes, is  
10 amended by amending the definition of "building and loan  
11 association" to read as follows:

12           ""Building and loan association" means any corporation [~~or~~  
13 ~~mutual association which~~] that has been authorized to operate as  
14 a savings bank or savings and loan association pursuant to  
15 chapter 412, and any federal savings and loan association."

16           SECTION 3. Section 412:1-104, Hawaii Revised Statutes, is  
17 amended to read as follows:



1           "§412:1-104 Names. (a) Unless authorized to engage in  
2 business as a financial institution in this State of the type  
3 indicated by the name or as otherwise approved by the  
4 commissioner, no person may use any of the terms "financial  
5 [~~institution,~~] institution", [~~bank,~~] bank", "savings  
6 [~~bank,~~] bank", "savings and [~~loan,~~] loan", "savings  
7 [~~association,~~] association", "financial services loan  
8 [~~company,~~] company", "credit [~~union,~~] union", "trust  
9 [~~company,~~] company", "intra-Pacific [~~bank,~~] bank",  
10 "international banking [~~corporation,~~] corporation", words of  
11 similar import, or translations of such words, in a manner that  
12 might suggest or tend to lead others into believing that the  
13 person is a financial institution of the character indicated by  
14 the name.

15           (b) No financial institution may use words designating  
16 another type of financial institution, [~~or~~] words of similar  
17 import, or translations of [~~such~~] these words, in a manner that  
18 suggests or [~~might tend~~] tends to lead others into believing  
19 that it is that type of financial institution.

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



1 SECTION 4. Section 412:1-109, Hawaii Revised Statutes, is  
2 amended by amending the definitions of "capital", "capital  
3 stock", "Hawaii financial institution", and "stock financial  
4 institution" to read as follows:

5 "Capital" means:

6 (1) [~~the~~] The aggregate par value or other amount received  
7 and allocated to the issued and outstanding capital  
8 stock of a financial institution; or

9 (2) [~~the~~] The total amount of [~~a mutual savings and loan~~  
10 ~~association or~~] a credit union's outstanding and  
11 unimpaired membership shares or share accounts.

12 "Capital stock" means the units of interest, whether or not  
13 having a par value, common or preferred, legally issued by a  
14 financial institution or other corporation, which represents a  
15 fractional ownership interest in the institution or corporation.  
16 The term does not include shares or membership in a [~~mutual~~  
17 ~~savings and loan association or~~] credit union.

18 "Hawaii financial institution" means:

19 (1) A corporation or credit union [~~which~~] that holds a  
20 charter or license under this chapter or under prior  
21 Hawaii law, authorizing it to accept deposits, to make



1 loans in excess of the rates permitted in chapter 478,  
2 or to engage in the business of a trust company; or

3 (2) A resulting bank as defined in article 12,  
4 and includes a corporation[~~, mutual savings and loan~~  
5 ~~association,~~] or credit union existing and chartered as a Hawaii  
6 financial institution or licensed to transact business in this  
7 State on July 1, 1993. A Hawaii financial institution may be a  
8 bank, resulting bank as defined in article 12, savings bank,  
9 savings and loan association, depository financial services loan  
10 company, nondepository financial services loan company, trust  
11 company, credit union, or intra-Pacific bank.

12 "Stock financial institution" means a financial institution  
13 [~~which~~] that issues shares of capital stock as evidence of  
14 fractional ownership in the institution. The term does not  
15 include [~~mutual savings and loan associations or~~] credit  
16 unions."

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

19 "(a) The commissioner and all employees, contractors,  
20 attorneys retained or employed by the State, and appointees of  
21 the division of financial institutions shall not divulge or  
22 furnish any information in their possession or obtained by them



1 in the course of their official duties to persons outside the  
2 division of financial institutions, except to the director of  
3 [~~the department of~~] commerce and consumer affairs[~~7~~] or unless  
4 otherwise permitted by this section or any other law regulating  
5 financial institutions or financial institution holding  
6 companies, in which case [~~such~~] that disclosure shall not  
7 authorize or permit any further disclosure of [~~such~~] that  
8 information. The disclosures prohibited by this [~~section~~]  
9 subsection shall include without limitation information that is:

- 10 (1) Privileged or exempt from disclosure under any federal  
11 or state law;
- 12 (2) Related to an examination performed by or on behalf of  
13 the commissioner or contained in any report of  
14 examination;
- 15 (3) Contained in any report submitted to or for the use of  
16 the commissioner, except for the nonproprietary  
17 portions of applications;
- 18 (4) Related to the business, personal, or financial  
19 affairs of any person [~~and~~] that is furnished to or  
20 for the use of the commissioner in confidence;



- 1 (5) Related to trade secrets and commercial or financial  
2 information obtained from a person [~~and~~] that is  
3 privileged or confidential;
- 4 (6) Obtained pursuant to any lawful investigation for the  
5 purpose of enforcing the laws regulating financial  
6 institutions and financial institution holding  
7 companies in an action or proceeding under parts III,  
8 IV, V, and VI of this article;
- 9 (7) Related solely to the internal personnel rules or  
10 other internal practices of the commissioner;
- 11 (8) Contained in personnel, medical, and similar files  
12 (including financial files), the disclosure of which  
13 would constitute a clearly unwarranted invasion of  
14 personal privacy; or
- 15 (9) Contained in inter-agency and intra-agency  
16 communications, whether or not contained in written  
17 memoranda, letters, tapes, or records that would not  
18 be routinely available by law to a private party,  
19 including but not limited to memoranda, reports, and  
20 other documents prepared by the staff of the  
21 commissioner.



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

4 (b) The commissioner shall furnish a copy of each report  
5 of examination to the financial institution or financial  
6 institution holding company examined. The report and its  
7 contents shall remain the property of the commissioner and shall  
8 not be disclosed to any person who is not an officer, director,  
9 employee, or authorized auditor, attorney, or other consultant  
10 or advisor of the financial institution or financial institution  
11 holding company. Any person ~~[which]~~ who has received the report  
12 from the financial institution or financial institution holding  
13 company shall be bound by the confidentiality provisions of this  
14 part. ~~[Subpoenas of or other legal process to obtain reports of~~  
15 ~~examination or information contained therein shall be directed~~  
16 ~~to the commissioner and not to the financial institution or~~  
17 ~~financial institution holding company that is the subject of the~~  
18 ~~examination. Upon receipt of such a subpoena or other legal~~  
19 ~~process requiring disclosure of such information the~~  
20 ~~commissioner may file a statement of objections or a motion with~~  
21 ~~a court of competent jurisdiction for a protective order and, in~~  
22 ~~any event, shall immediately notify the financial institution~~



1 ~~that is the subject of the report of examination of the subpoena~~  
2 ~~or other legal process and all relevant circumstances pertaining~~  
3 ~~to the same. Upon receipt of such notification, the financial~~  
4 ~~institution may itself file a statement of objections or a~~  
5 ~~motion with a court of competent jurisdiction for a protective~~  
6 ~~order.] The report and its contents shall not be subject to~~  
7 ~~subpoena or other legal process requiring disclosure."~~

8 SECTION 6. Section 412:2-109, Hawaii Revised Statutes, is  
9 amended by amending subsection (g) to read as follows:

10 "(g) [~~Each year before July 2,~~] The commissioner may  
11 annually charge each financial institution subject to  
12 examination by the commissioner [~~shall pay a~~] the sum of \$500  
13 plus \$100 for each office, agency, and branch office maintained  
14 by the financial institution, [~~to the commissioner to be~~]  
15 payment of which shall be made before July 2 and thereafter  
16 credited to the compliance resolution fund. The commissioner  
17 may establish, increase, decrease, or repeal this fee when  
18 necessary pursuant to rules adopted in accordance with chapter  
19 91."

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





1           "§412:2-306 Removal or prohibition of institution-  
2 **affiliated party.** (a) The commissioner may order the removal  
3 of any institution-affiliated party from office or employment  
4 with a Hawaii financial institution and the prohibition of the  
5 party's affiliation or participation in the affairs of the  
6 financial institution or any other Hawaii financial institution  
7 if the commissioner determines that all three of the following  
8 circumstances exist:

9           (1) The institution-affiliated party has violated this  
10 chapter or any rules [~~issued~~] adopted pursuant to this  
11 chapter, violated a cease and desist order [~~which~~]  
12 that has become effective, engaged or participated in  
13 an unsafe or unsound practice in connection with the  
14 financial institution, or breached a fiduciary duty  
15 owed to the financial institution;

16           (2) By reason of such violation, practice, or breach the  
17 financial institution has suffered or will probably  
18 suffer financial loss or other damage, the interests  
19 of the financial institution's depositors have been or  
20 may be prejudiced, or the institution-affiliated party  
21 has received financial gain or other benefit as a  
22 result of the violation, practice, or breach; and



1 (3) The violation, practice, or breach involves the  
2 institution-affiliated party's personal dishonesty[7]  
3 or demonstrates the party's wilful or continuing  
4 disregard for the safety or soundness of the financial  
5 institution.

6 (b) The commissioner may also order the removal of any  
7 institution-affiliated party from office or employment with a  
8 Hawaii financial institution and the prohibition of the party's  
9 affiliation or participation in the affairs of the financial  
10 institution or any other Hawaii financial institution if the  
11 commissioner determines that:

12 (1) The institution-affiliated party has been charged in  
13 any information, indictment, or complaint authorized  
14 by a United States attorney, state attorney general,  
15 or similar legal officer, with the commission of, or  
16 participation[7] in, a crime involving dishonesty or  
17 breach of trust that is punishable by imprisonment for  
18 a term exceeding one year under state or federal law;  
19 and

20 (2) The continued service by the institution-affiliated  
21 party may pose a threat to the interests of the



1           financial institution's depositors or may threaten to  
2           impair public confidence in the institution."

3           SECTION 8. Section 412:2-307, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

18           SECTION 9. Section 412:2-308, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20           "(a) In order to act with the utmost speed, the  
21 commissioner may issue an order immediately suspending an  
22 institution-affiliated party upon a determination that:



1 (1) [~~the~~] The grounds specified in section 412:2-306 are  
2 present; and

3 (2) [~~the~~] The protection of depositors or the financial  
4 institution [~~warrant~~] warrants the immediate  
5 suspension and prohibition of the institution-  
6 affiliated party from further participation in the  
7 conduct of the affairs of the financial institution[~~-~~]  
8 or any other Hawaii financial institution.

9 The order shall be accompanied by a notice of charges [~~which~~]  
10 that states the alleged violation, wrongful practice, or breach,  
11 and a summary of the facts in support of [~~such~~] the allegation.  
12 The notice of charges shall set forth a time and place for a  
13 hearing to determine whether the temporary order shall be [~~made~~  
14 ~~permanent.~~] converted to a permanent removal or prohibition  
15 order. Any order of immediate suspension issued to an  
16 institution-affiliated party shall also be served upon the  
17 affiliated Hawaii financial institution."

18 SECTION 10. Section 412:2-310, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§412:2-310 Removal, prohibition, or suspension; effect of**  
21 **order.** No institution-affiliated party whose removal,  
22 prohibition, or suspension has been ordered shall thereafter



1 participate in any manner in the conduct of the affairs of the  
2 affiliated Hawaii financial institution or any other Hawaii  
3 financial institution as long as [~~such~~] the order is in effect.  
4 Any violation of [~~such~~] the order shall constitute a violation  
5 of law, and shall constitute sufficient grounds for the issuance  
6 of a cease and desist order to the affiliated financial  
7 institution."

8 SECTION 11. Section 412:3-101, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§412:3-101 Name of financial institution.** (a) The name  
11 of every Hawaii financial institution shall be subject to the  
12 approval of the commissioner and shall conform with the  
13 provisions of section 414-51 or any successor thereto, whether  
14 or not the Hawaii financial institution is a corporation. If  
15 the Hawaii financial institution is incorporated, its name may,  
16 but need not, contain the word "corporation", "incorporated", or  
17 "limited", or an abbreviation of [~~one~~] any of the words.

18 (b) Prior to using a trade name or a fictitious name, a  
19 Hawaii financial institution shall provide written notification  
20 to the commissioner."

21 SECTION 12. Section 412:3-102, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "**§412:3-102 Change of name.** To change its name, a Hawaii  
2 financial institution shall file an application with the  
3 commissioner and pay [~~such~~] the fees as the commissioner may  
4 establish. The application shall be approved if the  
5 commissioner is satisfied that the new name complies with this  
6 chapter and chapter 414. Any change of name of a stock  
7 financial institution [~~or mutual savings and loan association~~]  
8 pursuant to this section shall be effected in accordance with  
9 chapter 414. Any change of name shall not affect a financial  
10 institution's rights, liabilities, or obligations existing prior  
11 to the effective date thereof, and no documents of transfer  
12 shall be necessary to preserve [~~such~~] the rights, liabilities,  
13 or obligations; provided that the commissioner may require  
14 notice to be given to the public and other governmental  
15 agencies."

16           SECTION 13. Section 412:3-111, Hawaii Revised Statutes, is  
17 amended by amending subsection (g) to read as follows:

18           "(g) The following records or files of a Hawaii financial  
19 institution shall not be destroyed except in accordance with  
20 rules of the commissioner [~~promulgated~~] adopted under chapter  
21 91:



1 (1) Minute books of meetings of shareholders, directors,  
2 and executive [~~committee~~] committees;

3 (2) Articles of incorporation or association and bylaws,  
4 and any amendments thereto;

5 [+2] (3) Capital stock [~~ledger~~] ledgers; and

6 [+3] (4) General ledgers and trust ledgers.

7 These records and files may be maintained in original form or in  
8 the form of a photographic, photostatic, microfilm, microcard,  
9 miniature photographic, or other reproduction by a durable  
10 medium for reproducing the original."

11 SECTION 14. Section 412:3-114, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§412:3-114 Duty to report illegal acts.** A Hawaii  
14 financial institution shall immediately notify the commissioner  
15 in writing of any act of robbery, embezzlement, or fraud  
16 committed in connection with its affairs whenever the concerned  
17 act involves a sum in excess of [~~\$10,000.~~] \$100,000."

18 SECTION 15. Section 412:3-201, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§412:3-201 Application for preliminary approval to**  
21 **organize a financial institution.** (a) Three[7] or more  
22 individuals, of whom at least three are residents of the State,



1 or any company [~~which~~] that seeks to become a financial  
2 institution holding company may file an application with the  
3 commissioner for preliminary approval to organize a Hawaii  
4 financial institution under this part. Banks seeking authority  
5 to engage in the trust business through a division or department  
6 of the bank, or through a subsidiary, shall apply for such  
7 authority under section 412:5-205.

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

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

11 (2) The specific location of its principal office,  
12 branches, agencies, and support facilities, and any  
13 lease agreements for such principal office[~~+~~],  
14 branches, agencies, and support facilities;

15 [~~+2~~] (3) Financial statements, employment history,  
16 education, management experience, and other  
17 biographical information for all applicants,  
18 organizers, proposed executive officers, and directors  
19 of the financial institution;

20 [~~+3~~] (4) The name and address of each proposed subscriber  
21 of capital stock in the financial institution [~~and if~~  
22 ~~capital has not been fully raised, a~~];





- 1        (5) The proposed capital plan [~~including a~~], if capital  
2        has not been fully raised, that shall include:
- 3        (A) A description of any stock options, debentures,  
4                and stock warrants offered or proposed to be  
5                offered to any person; and
- 6        (B) Any stock option plan;
- 7        (6) The proposed capital stock solicitation plan, if  
8        subscriptions for capital stock will be solicited,  
9        that shall include:
- 10       (A) Information regarding the solicitation plan by  
11               which the applicant and the proposed financial  
12               institution propose to conduct the solicitation  
13               of subscribers;
- 14       (B) Information regarding the classes of shares,  
15               respective quantities of shares for each class,  
16               and the subscription price of each class of  
17               stock;
- 18       (C) A specimen subscription contract or purchase  
19               agreement and other related documents to be  
20               executed by subscribers;



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



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

10        [~~4~~] Proposed] (7) The financial [~~institution~~  
11        institution's proposed policies concerning loans [~~7~~]  
12        and concentrations of credit, asset and liability  
13        management, conflicts of interest, investments,  
14        [~~operations, and~~] community reinvestment [~~7~~], bank  
15        secrecy, anti-money laundering, and customer  
16        identification;

17        [~~5~~] (8) The financial institution's business plan [~~7~~] for  
18        the first three years of operations;

19        [~~6~~] (9) Financial projections regarding the financial  
20        institution's profitability [~~7~~] for the first three  
21        years of operations;



1       ~~[(7)]~~ (10) A market study or letters of support evidencing  
2           the need and advisability of granting authority to  
3           organize a financial institution;

4       ~~[(8)]~~ (11) Except for trust companies, evidence that the  
5           financial institution has applied for federal deposit  
6           insurance from the Federal Deposit Insurance  
7           Corporation or other appropriate federal deposit  
8           insurer;

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

15       ~~[(9)]~~ (13) Evidence that the proposed directors and  
16           executive officers of the financial institution have  
17           the financial ability, responsibility, and experience  
18           to engage in the business of a financial institution;

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

21       (15) The proposed articles of incorporation and bylaws of  
22       the financial institution;



1        [~~(10)~~] (16) A description of any existing or proposed  
2                    service corporation, affiliate, or subsidiary; and  
3        [~~(11)~~] (17) Any other information that the commissioner may  
4                    require.

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

13            (d) The identity of each applicant and organizer, and any  
14 information [~~which~~] that is not confidential, shall be available  
15 to the public. The applicant may request in writing that  
16 information be kept confidential. The applicant shall designate  
17 and separate any matter [~~which~~] that the applicant claims is  
18 confidential and shall submit a separate statement providing the  
19 reasons and authority for the request for confidential  
20 treatment. The failure by the applicant to request confidential  
21 treatment and to designate and separate the confidential matter  
22 shall preclude any objection or claim for wrongful disclosure of



1 the ~~[same-]~~ information. Information determined by the  
2 commissioner to be confidential, pursuant to an applicant's  
3 request or otherwise, shall not be available to the public.

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

7 SECTION 16. Section 412:3-202, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§412:3-202 Additional requirements for holding company.**

10 [~~a~~] An applicant for the organization of a Hawaii financial  
11 institution [~~which~~] that will be a subsidiary of a holding  
12 company shall furnish the commissioner with the following  
13 additional information regarding the holding company, unless  
14 waived by the commissioner:

15 (1) If the holding company is a corporation, a certificate  
16 from the incorporating jurisdiction indicating that  
17 the corporation was properly organized under  
18 applicable corporate law, and that it is otherwise in  
19 good standing;

20 (2) Its existing and proposed affiliates and subsidiaries,  
21 and the extent and nature of its control over the  
22 operations of the proposed financial institution;



- 1           (3) Financial statements, employment history, education,  
2           management experience, and other biographical  
3           information for all of its executive officers and  
4           directors;
- 5           (4) The name and address of each shareholder or each  
6           proposed subscriber of capital stock~~[, and if capital~~  
7           ~~has not been fully raised, a];~~
- 8           (5) The proposed capital plan [including a], if capital  
9           has not been fully raised, that shall include:
- 10           (A) A description of any stock options, debentures,  
11           and stock warrants offered or proposed to be  
12           offered to any person; and
- 13           (B) Any stock option plan;
- 14           (6) The proposed capital stock solicitation plan, if  
15           subscriptions for capital stock will be solicited,  
16           that shall include:
- 17           (A) Information regarding the solicitation plan by  
18           which the applicant and the proposed holding  
19           company propose to conduct the solicitation of  
20           subscribers;
- 21           (B) Information regarding the classes of shares,  
22           respective quantities of shares for each class,



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





1                   registration or qualification statement most  
 2                   recently filed with the commissioner of  
 3                   securities and any subsequent amendments thereto;  
 4                   and

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

14           (7) The articles of incorporation and bylaws of the  
 15           holding company;

16           ~~(5)~~ (8) Evidence that it has or will have the financial  
 17           ability, responsibility, and experience to engage in  
 18           the business of a financial institution holding  
 19           company; ~~and~~

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



1       [~~(6)~~] (10) Any other information that the commissioner may  
2               require.

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

5       SECTION 17. Section 412:3-203, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "**§412:3-203 Deferral of application requirements.** For  
8 good cause, the commissioner may defer specific application  
9 requirements until the filing of an application for a charter or  
10 [a] license."

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

13       "**§412:3-204 Publication of notice.** (a) Once the  
14 application to organize a Hawaii financial institution is  
15 complete and has been accepted by the commissioner, the  
16 applicant shall publish a notice at least once a week for three  
17 successive weeks in a newspaper of general circulation in each  
18 county in this State where the proposed financial institution  
19 intends to establish a principal office, branch, or agency.

20       (b) The notice shall be in a form prescribed by the  
21 commissioner and shall state the fact that an application has  
22 been filed, the names of the applicant and organizers, the



1 location of the financial institution's proposed [~~plae~~] places  
2 of business, and the amount of its proposed capital. The notice  
3 shall also state that within fifteen days after the last  
4 publication of the notice any person may file with the  
5 commissioner written comments on the application or a request  
6 for an informational and comment proceeding to present  
7 information and comments to the commissioner. Any request for  
8 an informational and comment proceeding shall be accompanied by  
9 a brief statement of the person's interest in the application,  
10 the matters to be discussed at the informational and comment  
11 proceeding, and the reasons why written comments will not  
12 suffice in lieu of an informational and comment proceeding."

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

15 "**§412:3-206 Grant of preliminary approval to organize a**  
16 **financial institution.** (a) Following the expiration of the  
17 time for the submission of written comments or the completion of  
18 an informational and comment proceeding, the commissioner shall  
19 issue a written decision and order on the application for  
20 preliminary approval to organize. If the commissioner approves  
21 the application, the applicant shall become an "applicant in  
22 [~~organization,~~] organization", and may take all steps necessary



1 to complete organization and file an application for a charter  
2 or license.

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

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

7 (2) If the financial institution will be a subsidiary of a  
8 holding company, the holding company is or will be  
9 properly organized, in good standing, and financially  
10 sound, and is not or will not be engaging directly or  
11 indirectly through any subsidiary or affiliate in  
12 business prohibited by this chapter;

13 (3) The qualifications, character, financial  
14 responsibility, experience, and general fitness of the  
15 proposed directors and executive officers of the  
16 financial institution and any holding company are such  
17 as will warrant public confidence and a belief that  
18 the business of the financial institution will be  
19 honestly and efficiently conducted. For purposes of  
20 this section, the commissioner may presume that in the  
21 absence of credible evidence to the contrary, a  
22 director, officer, or controlling person is of good



1 character and sound financial standing. [~~Such~~] The  
2 presumption may be rebutted by evidence to the  
3 contrary, including without limitation a finding that  
4 [~~such~~] the director, officer, or controlling person  
5 has:

6 (A) Been convicted of, or has pleaded nolo contendere  
7 to, any crime involving an act of fraud or  
8 dishonesty;

9 (B) Consented to or suffered a judgment in any civil  
10 action based upon conduct involving an act of  
11 fraud or dishonesty;

12 (C) Consented to or suffered the suspension or  
13 revocation of any professional, occupational, or  
14 vocational license based upon conduct involving  
15 an act of fraud or dishonesty;

16 (D) Wilfully made or caused to be made in any  
17 application or report filed with the  
18 commissioner, or in any proceeding before the  
19 commissioner, any statement [~~which~~] that was at  
20 the time and in the light of the circumstances  
21 under which it was made false or misleading with  
22 respect to any material fact, or has wilfully



1 omitted to state in any application or report any  
2 material fact [~~which~~] that was required to be  
3 stated therein; or

4 (E) Wilfully committed any violation of, or has  
5 wilfully aided, abetted, counseled, commanded,  
6 induced, or procured the violation by any other  
7 person of, any provision of this chapter or of  
8 any rule or order issued under this chapter;  
9 [~~and~~]

10 (4) The proposed operations of the financial institution  
11 will be conducted in a safe and sound manner~~[-]~~;

12 (5) The articles of incorporation of the financial  
13 institution comply in all respects with this chapter  
14 and chapter 414; and

15 (6) The capital stock solicitation submission is complete  
16 and the solicitation will not affect the safety or  
17 soundness of the proposed financial institution or  
18 harm the public interest.

19 (c) In granting preliminary approval to organize, the  
20 commissioner may impose any conditions and restrictions that are  
21 in the public interest, including but not limited to requiring  
22 the applicant to fulfill representations contained in its



1 application and agreements made with the commissioner during the  
2 application process.

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

15 (e) The applicant and the proposed Hawaii financial  
16 institution shall not solicit subscriptions for the capital  
17 stock of the Hawaii financial institution until the written  
18 decision and order granting the application for preliminary  
19 approval to organize has been issued and the articles of  
20 incorporation have been accepted for filing by the director of  
21 commerce and consumer affairs. The approval shall not



1 constitute a determination that the applicant has complied with  
2 chapter 485 or any other state or federal law."

3 SECTION 20. Section 412:3-211, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

13 SECTION 21. Section 412:3-212, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§412:3-212 Final application for charter or license.** (a)  
16 After completing its organization of the Hawaii financial  
17 institution, the applicant in organization may file with the  
18 commissioner an application for a charter or license to engage  
19 in the business of a Hawaii financial institution. The  
20 application shall be in a form prescribed by the commissioner  
21 and, unless waived by the commissioner, shall contain the  
22 following information:





- 1           (1) A sworn statement by the applicant in organization  
2           that it has complied with all requirements of law  
3           concerning the organization of the proposed financial  
4           institution, including but not limited to the  
5           requirement that the full amount of its required  
6           capital and surplus has been paid in or deposited in  
7           escrow under terms satisfactory to the commissioner;
- 8           (2) The names and addresses of all common and preferred  
9           shareholders, and elected or appointed directors and  
10          executive officers of the proposed financial  
11          institution and any holding company of the financial  
12          institution, and the number of shares owned by each;
- 13          (3) A description of any material changes [~~which~~] that  
14          have occurred in the financial institution's  
15          organizers or the applicant in organization, its  
16          business plan, and its financial condition since the  
17          issuance of the preliminary approval to organize,  
18          accompanied by updated financial statements of the  
19          financial institution, any holding company of the  
20          financial institution, the applicant in organization,  
21          and all executive officers and directors of the



1 financial institution and any holding company of the  
2 financial institution;

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

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

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

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

19 (c) If the commissioner is satisfied that the financial  
20 institution and, if applicable, its holding company have  
21 fulfilled all the requirements of law[+] and the grounds for  
22 preliminary approval, and that the financial institution is



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

18 SECTION 22. Section 412:3-506, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§412:3-506 Opening or relocating ~~[automatic teller~~**  
21 **~~machine or] a support facility.~~** A Hawaii financial institution  
22 ~~[which]~~ that opens or relocates ~~[an automatic teller machine or]~~



1 a support facility shall within thirty days thereafter submit a  
2 letter to the commissioner containing the following information:

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

10 SECTION 23. Section 412:3-508, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§412:3-508 Closing [~~automatic teller machine or~~] a**  
13 **support facility.** A Hawaii financial institution shall provide  
14 notice to the commissioner of its closure of [~~an automatic~~  
15 ~~teller machine or~~] a support facility within thirty days of the  
16 closing. The notice shall contain the location of the  
17 [~~automatic teller machine or~~] support facility closed and the  
18 date of closing."

19 SECTION 24. Section 412:3-604, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:



1           "(a) For any transaction covered by this part [~~which~~] that  
2 requires approval of the shareholders or members of the  
3 financial institution, the voting requirements shall be:

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

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

16       ~~[(3)]~~ (2) If a Hawaii financial institution is a credit  
17 union, a majority of members present in person at any  
18 meeting shall be required to approve any action under  
19 this part."

20           SECTION 25. Section 412:3-605, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§412:3-605 Notice to ~~[mutual savings and loan or] credit~~**  
2 **union member~~[; no right of dissent]~~**. [~~(a)~~] Wherever the  
3 approval of a transaction is required by this part by the  
4 members of a ~~[mutual savings and loan association or a]~~ credit  
5 union, notice of a ~~[+]meeting[+]~~ of its members, which may be an  
6 annual or a special ~~[+]meeting, [+]~~ shall be given to each member  
7 entitled to vote. The notice shall be provided not less than  
8 twenty days before the date of the meeting. The notice shall  
9 state that the purpose or one of the purposes of the meeting is  
10 to vote upon a transaction covered by this part and shall be  
11 accompanied by a detailed description of the proposed  
12 transaction or a summary of the transaction and a copy of the  
13 plan of conversion, merger, consolidation, sale of assets or  
14 assumption of liabilities, or voluntary cessation of business  
15 and dissolution approved by the board of directors.

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

19           SECTION 26. Section 412:3-608, Hawaii Revised Statutes, is  
20 amended to read as follows:

21           "**§412:3-608 Conversion to another type of financial**  
22 **institution.** (a) A financial institution of any type, whether



1 federal or State, may convert to a Hawaii financial institution of  
2 any other type if the institution and its holding company or  
3 holding companies, if any, shall have complied with all  
4 requirements, conditions, and limitations imposed by this part and  
5 by federal law, if applicable.

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

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

16 (1) A certificate signed by two executive officers of the  
17 financial institution, verifying the validity of the  
18 meeting of the shareholders or members, that the  
19 requisite vote [~~has~~] had been obtained, and that the  
20 attached copy of the resolution to convert adopted at  
21 the meeting is true and correct, or that the applicant



1 has complied with all federal laws and regulations  
2 regarding the conversion, as the case may be;

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

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

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

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[7] but not be limited  
21 to[7] 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  
2 chapter 414. If the resulting Hawaii financial institution is a  
3 new 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 27. Section 412:3-609, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "**§412:3-609 Merger or consolidation of Hawaii financial**  
7 **institutions.** (a) Any one or more financial institutions may  
8 merge into another financial institution and any two or more  
9 financial institutions other than credit unions may consolidate  
10 into a new financial institution if the institutions shall have  
11 complied with all requirements, conditions, and limitations  
12 imposed by this chapter and by federal law, if applicable. A  
13 merger or consolidation in which one or more of the  
14 participating financial institutions is a financial institution  
15 chartered or licensed under the laws of or whose operations are  
16 conducted principally in any state other than Hawaii, in any  
17 possession or territory of the United States or in any foreign  
18 country shall be authorized only in accordance with subsection  
19 (d), in accordance with part IV, article 5, of this chapter or  
20 in accordance with article 12.

21       (b) Any merger or consolidation of Hawaii stock financial  
22 institutions shall be effected pursuant to the procedures,



1 conditions, and requirements for, and with the effect of, the  
2 merger or consolidation of two or more corporations pursuant to  
3 chapter 414; except that the vote by the shareholders of each of  
4 the participating institutions to approve the plan of merger or  
5 consolidation shall satisfy the requirements of section 412:3-  
6 604 and that the director of commerce and consumer affairs shall  
7 not file the articles of merger or consolidation until the plan  
8 of merger or consolidation shall have been approved by the  
9 commissioner in writing.

10 (c) One or more federal financial institutions whose  
11 operations are conducted principally in this State and one or  
12 more Hawaii financial institutions may be merged or  
13 consolidated, with the federal financial institution, the Hawaii  
14 financial institution, or a new consolidated financial  
15 institution being the resulting institution, if the merger or  
16 consolidation is permitted by federal law. The federal  
17 financial institution shall comply with all requirements,  
18 conditions, and limitations imposed by federal law or regulation  
19 with respect to the merger or consolidation. The Hawaii  
20 financial institution shall comply with all of the provisions of  
21 this chapter and chapter 414, except that the vote by  
22 shareholders or members of the Hawaii financial institution to



1 approve the plan of merger or consolidation shall satisfy the  
2 requirements of section 412:3-604. The resulting financial  
3 institution shall file with the director of commerce and  
4 consumer affairs a confirmation in writing by the commissioner  
5 of the date and time of the merger or consolidation, together  
6 with the appropriate filing fee pursuant to chapter 414.

7 (d) One or more financial institutions chartered or  
8 licensed under the laws of or whose operations are conducted  
9 principally in any state other than this State, in any  
10 possession or territory of the United States, or in any foreign  
11 country and one or more Hawaii depository financial institutions  
12 or trust companies may be merged or consolidated, but only where  
13 the depository financial institution or trust company resulting  
14 from any merger or consolidation pursuant to this subsection is  
15 chartered or licensed under the laws of and conducts its  
16 operations principally in this State, is a federal financial  
17 institution that conducts its operations principally in this  
18 State, or is an out-of-state bank authorized to establish  
19 interstate branches in this State pursuant to section 412:12-  
20 104. A nondepository financial services loan company licensed  
21 pursuant to article 9 may be merged or consolidated with another  
22 corporation, but only where the nondepository financial



1 institution resulting from any merger or consolidation is  
2 licensed under the laws of this State. The financial  
3 institution chartered or licensed under the laws of any state  
4 other than this State, any possession or territory of the United  
5 States, or any foreign country shall comply with all  
6 requirements, conditions, and limitations imposed by the law of  
7 the jurisdiction under which the financial institution is  
8 chartered or licensed with respect to the merger or  
9 consolidation. The Hawaii financial institution shall comply  
10 with all of the provisions of this chapter and chapter 414,  
11 except that the vote by shareholders or members of the Hawaii  
12 financial institution to approve the plan of merger or  
13 consolidation shall satisfy the requirements of section 412:3-  
14 604. If the resulting institution is a Hawaii financial  
15 institution, the director of commerce and consumer affairs shall  
16 not file articles of merger or consolidation until the plan of  
17 merger or consolidation shall have been approved by the  
18 commissioner in writing. If the resulting institution is a  
19 federal financial institution, the director of commerce and  
20 consumer affairs shall not file the articles of merger or  
21 consolidation until the plan of merger or consolidation shall  
22 have been approved by the commissioner in writing and the



1 resulting federal financial institution shall file with the  
2 director of commerce and consumer affairs a confirmation in  
3 writing by the commissioner of the date and time of the merger  
4 or consolidation, together with the appropriate filing fee  
5 pursuant to chapter 414.

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



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

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



1 and upon a vote [~~which~~] that satisfies the requirements of  
2 sections 412:3-604 and 412:3-605.

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

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





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

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

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

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

20 [~~h~~] (g) The commissioner may require notice to be given  
21 to the public as may ~~seem~~ be deemed appropriate. The  
22 commissioner may conduct an examination of the financial



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

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

- 6 (1) Any resulting Hawaii financial institution would meet  
7 all the requirements under this chapter for a charter  
8 or license to the same extent that it would if it were  
9 applying for a new charter or license;
- 10 (2) Any resulting financial institution would be  
11 adequately capitalized;
- 12 (3) The plan of merger or consolidation is fair to  
13 creditors and the shareholders or members of all  
14 participating institutions;
- 15 (4) The participating institutions have complied, or will  
16 comply, with all requirements, conditions, and  
17 limitations imposed by federal [~~law~~] laws or  
18 [~~regulation~~] regulations or by the [~~law~~] laws or  
19 [~~regulation~~] regulations of the jurisdiction under  
20 which an institution is chartered or licensed with  
21 respect 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 financial institution is consistent with  
4           the interests of the depositors, beneficiaries,  
5           creditors, shareholders, or members of the financial  
6           institution, or in the public interest;
- 7           (6) The merger or consolidation will not jeopardize the  
8           safety or soundness of any participating financial  
9           institutions or the resulting financial institution,  
10          and is not otherwise 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~~] that is the resulting institution shall continue  
14 as the 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 28. 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~~] that is authorized to do a trust  
9 business, the resulting institution, by operation of law and  
10 without further court order, transfer, substitution, act, or deed  
11 shall succeed to the rights, properties, assets, investments,  
12 deposits, demands, agreements, and trusts of the converting or  
13 participating institutions under all trusts, personal  
14 representations, executorships, administrations, guardianships,  
15 agencies, and all other fiduciary or representative capacities as  
16 though the resulting institution had originally assumed the same  
17 and shall succeed to and be entitled to take and execute the  
18 appointment to all trusteeships, personal representations,  
19 executorships, guardianships, conservatorships, and other  
20 fiduciary and representative capacities to which the converting or  
21 participating institution may be named or is thereafter named in  
22 wills, whether probated before or after the conversion, merger, or



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

3 SECTION 29. 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 30. 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 31. 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  
4 [~~which~~] that are authorized for a bank or [~~which~~] that are usual  
5 or incidental to 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~~] apply 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 32. 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~~] that will qualify for  
19 the low income housing tax credit under section 42 of the Internal  
20 Revenue Code of 1986, as amended, and under chapters 235 and 241;  
21 provided that the total amount invested by a bank under this  
22 subsection in any one limited partnership, limited liability



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

9 SECTION 33. 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 34. 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 service corporation are in a safe and sound condition, and  
11 the amount of stock to be owned by each will not adversely  
12 affect 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



1 be subject to the written [~~acknowledgement~~] acknowledgment by  
2 the applicant that the service corporation shall be subject to:

3 (1) [~~the~~] The supervision of the commissioner;

4 (2) [~~examination~~] Examination pursuant to this section;

5 and

6 (3) [~~such~~] Any other terms and conditions as the  
7 commissioner deems appropriate.

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

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



1 (g) A service corporation may engage in permitted  
2 activities directly or through one or more subsidiaries or joint  
3 ventures.

4 (h) Whenever a service corporation engages in an activity  
5 [~~which~~] that is not permitted under this section, and because of  
6 [~~such~~] this activity a savings bank's investment in the service  
7 corporation would be improper, within ninety days following  
8 written notice from the commissioner to the savings bank:

9 (1) [~~the~~] The improper activity shall be discontinued; or

10 (2) [~~the~~] The savings bank shall divest itself of its  
11 ownership or investment in the service corporation.

12 The service corporation or the savings bank may appeal the  
13 commissioner's decision and request a hearing in accordance with  
14 chapter 91.

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

20 SECTION 35. Section 412:6-204, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§412:6-204 Operating subsidiaries.** (a) "Operating  
2 subsidiary" means a corporation other than a corporation  
3 referred to in section 412:6-306(g) (2) to (7) of which more than  
4 fifty per cent of the voting securities is held by a savings  
5 bank.

6           (b) An operating subsidiary may engage in activities  
7 [~~which are~~] authorized for a savings bank or [~~which~~] that are  
8 usual or incidental to the business of a savings bank.

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





1 applying applicable statutory limitations such as contained in  
2 section 412:6-303.

3 (d) The savings bank shall file an application with the  
4 commissioner in a form approved by the commissioner. The  
5 application shall be accompanied by a fee, the amount of which  
6 shall be prescribed by rule. The application shall contain the  
7 following information concerning the proposed operating  
8 subsidiary:

- 9 (1) The name and date for commencement of operations;  
10 (2) The specific location;  
11 (3) The activities and nature of business;  
12 (4) The ownership, amount, and nature of the investment;  
13 and  
14 (5) Any other information that the commissioner may  
15 require.

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



1 (f) The savings bank shall notify the commissioner in  
2 writing within five days of acquiring or establishing any  
3 operating subsidiary or performing new activities in the  
4 operating subsidiary. The notification shall provide the  
5 information specified in subsection (d).

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

13 (h) The savings bank shall notify the commissioner in  
14 writing within five days of closing an operating subsidiary.  
15 The notification shall provide the date of closing, the reasons  
16 for the closure, and the means by which the assets and  
17 liabilities of the operating subsidiary were disposed."

18 SECTION 36. Section 412:6-306, Hawaii Revised Statutes, is  
19 amended by amending subsection (h) to read as follows:

20 "(h) To the extent specified herein, a savings bank may  
21 invest its own assets in limited partnerships, limited liability  
22 partnerships, limited liability companies, or corporations



1 formed to invest in residential properties [~~which~~] that will  
2 qualify for the low income housing tax credit under section 42  
3 of the Internal Revenue Code of 1986, as amended, and under  
4 chapters 235 and 241; provided that the total amount invested by  
5 a savings bank under this subsection in any one limited  
6 partnership, limited liability partnership, limited liability  
7 company, or corporation shall not, without the prior approval of  
8 the commissioner, exceed two per cent of the savings bank's  
9 capital and surplus and the aggregate amount invested under this  
10 subsection shall not, without the prior approval of the  
11 commissioner, exceed five per cent of the savings bank's capital  
12 and surplus. In no case shall the aggregate amount invested by  
13 a savings bank under this subsection exceed ten per cent of the  
14 savings bank's capital and surplus."

15 SECTION 37. Section 412:7-100, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "**§412:7-100 Definition.** In this article, "savings and  
18 loan association" means a corporation [~~or mutual association~~]  
19 [~~which~~] that has the authority to operate as a savings and loan  
20 association under this chapter."

21 SECTION 38. Section 412:7-203, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           **"§412:7-203 Service corporations.** (a) "Service  
2 corporation" means a corporation whose stock is owned entirely  
3 by one or more state or federally chartered savings and loan  
4 associations or savings banks.

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

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

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



- 1           (1) ~~[the]~~ The supervision of the commissioner;
- 2           (2) ~~[examination]~~ Examination pursuant to this section;
- 3           and
- 4           (3) ~~[such]~~ Any other terms and conditions as the
- 5           commissioner deems appropriate.
- 6           (e) Every service corporation shall permit the
- 7           commissioner to examine its books, records, and activities from
- 8           time to time, to the extent and whenever the commissioner deems
- 9           necessary to determine the propriety of any investment by a
- 10          savings and loan association in ~~[such]~~ the service corporation
- 11          and whether the activities of the service corporation pose a
- 12          significant risk of loss to the parent savings and loan
- 13          association. The service corporation shall pay the entire cost
- 14          of ~~[such]~~ the examination. In addition, a service corporation,
- 15          at its sole expense, shall cause an independent audit to be made
- 16          of its books, records, and activities if and when deemed
- 17          necessary by the commissioner.
- 18          (f) A service corporation may engage in activities
- 19          permitted for a service corporation of a federally chartered
- 20          savings and loan association and ~~[such]~~ other activities as the
- 21          commissioner may approve.



1 (g) A service corporation may engage in permitted  
2 activities directly or through one or more subsidiaries or joint  
3 ventures.

4 (h) Whenever a service corporation engages in an activity  
5 [~~which~~] that is not permitted under this section, and because of  
6 [~~such~~] the activity a savings and loan association's investment  
7 in the service corporation would be improper, within ninety days  
8 following written notice from the commissioner to the savings  
9 and loan association:

10 (1) [~~the~~] The improper activity shall be discontinued; or

11 (2) [~~the~~] The savings and loan association shall divest  
12 itself of its ownership or investment in the service  
13 corporation.

14 The service corporation or the savings and loan association may  
15 appeal the commissioner's decision and request a hearing in  
16 accordance with chapter 91.

17 (i) The savings and loan association shall notify the  
18 commissioner in writing within five days of closing a service  
19 corporation. The notification shall provide the date of closing,  
20 the reasons for the closure, and the means by which the assets  
21 and liabilities of the service corporation were disposed."



1 SECTION 39. Section 412:7-204, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§412:7-204 Operating subsidiaries.** (a) "Operating  
4 subsidiary" means a corporation other than a corporation  
5 referred to in section 412:7-306(g)(2) to (7) of which more than  
6 fifty per cent of the voting securities is held by a savings and  
7 loan association.

8 (b) An operating subsidiary may engage in activities  
9 ~~[which are]~~ authorized for a savings and loan association or  
10 ~~[which]~~ that are usual or incidental to the business of a  
11 savings and loan association.

12 (c) No savings and loan association may acquire,  
13 establish, or hold the voting securities of an operating  
14 subsidiary without the commissioner's prior written approval;  
15 provided~~[7]~~ that ~~[such approval]~~:

16 (1) Approval shall not be required so long as the savings  
17 and loan association's aggregate net contributions to  
18 the capital of the operating subsidiary remain less  
19 than ten per cent of the savings and loan  
20 association's capital and surplus; ~~[provided further,~~  
21 ~~that the]~~ and



1       (2) The savings and loan association shall comply with the  
2           notification requirements of subsection (f).

3 Unless otherwise provided by law or rule, all provisions of this  
4 chapter applicable to the operations of the parent savings and  
5 loan association shall [~~be applicable~~] apply to the operations  
6 of its operating subsidiary. Unless otherwise provided by law  
7 or rule, pertinent accounts of the parent savings and loan  
8 association and its operating subsidiaries shall be consolidated  
9 for the purpose of applying applicable statutory limitations  
10 such as contained in section 412:7-303.

11       (d) The savings and loan association shall file an  
12 application with the commissioner in a form approved by the  
13 commissioner. The application shall be accompanied by a fee,  
14 the amount of which shall be prescribed by rule. The  
15 application shall contain the following information concerning  
16 the proposed operating subsidiary:

- 17       (1) The name and date for commencement of operations;  
18       (2) The specific location;  
19       (3) The activities and nature of business;  
20       (4) The ownership, amount, and nature of the investment;  
21       and





1           (5) Any other information that the commissioner may  
2           require.

3           (e) If after appropriate examination and investigation,  
4 the commissioner is satisfied that the acquisition,  
5 establishment, or holding the voting securities of the operating  
6 subsidiary will comply with this section, the commissioner shall  
7 approve [~~such~~] the application in writing, with [~~such~~]  
8 conditions as the commissioner may deem appropriate.

9           (f) The savings and loan association shall notify the  
10 commissioner in writing within five days of acquiring or  
11 establishing any operating subsidiary or performing new  
12 activities in the operating subsidiary. The notification shall  
13 provide the information specified in subsection (d).

14           (g) The accounts of each operating subsidiary of a savings  
15 and loan association shall be maintained independently of the  
16 accounts of all of the savings and loan association's other  
17 operating subsidiaries and independently of the accounts of the  
18 savings and loan association itself. At least at the end of  
19 every quarter of its fiscal year the savings and loan  
20 association shall consolidate or recognize its proportionate  
21 share of the profit and loss from each operating subsidiary.



1       (h) The savings and loan association shall notify the  
2 commissioner in writing within five days of closing an operating  
3 subsidiary. The notification shall provide the date of closing,  
4 the reasons for the closure, and the means by which the assets  
5 and liabilities of the operating subsidiary were disposed."

6       SECTION 40. Section 412:7-306, Hawaii Revised Statutes, is  
7 amended by amending subsection (h) to read as follows:

8       "(h) To the extent specified herein, a savings and loan  
9 association may invest its own assets in limited partnerships,  
10 limited liability partnerships, limited liability companies, or  
11 corporations formed to invest in residential properties [~~which~~]  
12 that will qualify for the low income housing tax credit under  
13 section 42 of the Internal Revenue Code of 1986, as amended, and  
14 under chapters 235 and 241; provided that the total amount  
15 invested by a savings and loan association under this subsection  
16 in any one limited partnership, limited liability partnership,  
17 limited liability company, or corporation shall not, without the  
18 prior approval of the commissioner, exceed two per cent of the  
19 savings and loan association's capital and surplus and the  
20 aggregate amount invested under this subsection shall not,  
21 without the prior approval of the commissioner, exceed five per  
22 cent of the savings and loan association's capital and surplus.



1 In no case shall the aggregate amount invested by a savings and  
2 loan association under this subsection exceed ten per cent of  
3 the savings and loan association's capital and surplus."

4 SECTION 41. Section 412:8-201, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§412:8-201 Fiduciary powers.** Every trust company shall  
7 have the power and authority to serve as a trustee, personal  
8 representative, conservator, assignee for the benefit of others,  
9 or receiver, subject to the duties imposed by the instrument or  
10 by law. As used herein, the term "instrument" means any trust  
11 agreement, declaration, or other agreement, any valid will, or  
12 any court order or decree in any probate, guardianship,  
13 conservatorship, or receivership. Pursuant thereto, a trust  
14 company is authorized and empowered to exercise powers as  
15 provided by law, including[7] but not limited to:

- 16 (1) Perform such acts as may be prudent, consistent with,  
17 and reasonably necessary to carry out the legitimate  
18 purposes of [~~such~~] the instrument;
- 19 (2) Administer, fulfill, and discharge all lawful duties  
20 imposed by the instrument or by law, for such  
21 remuneration as may be agreed upon or provided by law;



- 1           (3) Acquire principal and income on behalf of the estate
- 2           administered by the trust company, including without
- 3           limitation real property, insurance proceeds, rents,
- 4           interest, dividends, mortgages, bonds, bills, notes,
- 5           and securities;
- 6           (4) Buy, sell, issue, negotiate, register, transfer, or
- 7           countersign certificates of stock, bonds, or other
- 8           obligations of any corporation, association, or
- 9           municipality;
- 10          (5) Lease, purchase, hold, and convey real and personal
- 11          property to the extent authorized by the instrument or
- 12          by law, or consistent with the purposes thereof; and
- 13          (6) Execute and issue on behalf of the estate any
- 14          documents necessary to the prudent administration
- 15          thereof, including without limitation any receipts,
- 16          certificates, papers, and contracts which shall be
- 17          signed by an appropriate trust officer designated by
- 18          the trust company."

19           SECTION 42. Section 412:9-403, Hawaii Revised Statutes, is  
 20 amended to read as follows:

21           "**§412:9-403 Service corporations.** Subject to the approval  
 22 of the commissioner, one or more depository financial services



1 loan companies[7] may form and own a service corporation only  
2 under the following conditions:

3 (1) The depository financial services loan company or  
4 companies participating in the formation of the  
5 service corporation are in and will remain in a safe  
6 and sound condition, and the depository financial  
7 services loan company's or companies' solvency will  
8 not be adversely affected by the formation or  
9 ownership of the service corporation;

10 (2) A depository financial services loan company may not  
11 own or invest in any capital stock, securities, or  
12 other interest of a service corporation if, together  
13 with its investment in the capital stock, securities,  
14 or other interest of any other service corporations,  
15 its aggregate outstanding investment in all service  
16 corporations will exceed fifty per cent of the  
17 depository financial services loan company's capital  
18 and surplus;

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



1 acknowledgment by the applicant that the service  
2 corporation shall be subject to:

3 (A) [~~the~~] The supervision of the commissioner;

4 (B) [~~examination~~] Examination pursuant to this  
5 section; and

6 (C) [~~such~~] Any other terms and conditions as the  
7 commissioner deems appropriate;

- 8 (4) Every service corporation shall permit the  
9 commissioner to examine its books, records, and  
10 activities from time to time, to the extent and  
11 whenever the commissioner deems necessary to determine  
12 the propriety of any investment by a depository  
13 financial services loan company in [~~such~~] the service  
14 corporation and whether the activities of the service  
15 corporation pose a significant risk of loss to the  
16 parent depository financial services loan company.  
17 The service corporation shall pay the entire cost of  
18 the examination. In addition, a service corporation,  
19 at its sole expense, shall cause an independent audit  
20 to be made of its books, records, and activities if  
21 and when deemed necessary by the commissioner;



1 (5) A service corporation may engage in any activity  
2 permitted to its parent depository financial services  
3 loan company and any other activity as the  
4 commissioner may approve;

5 (6) A service corporation may engage in permitted  
6 activities directly or through one or more  
7 subsidiaries or joint ventures; ~~and~~

8 (7) Whenever a service corporation engages in an activity  
9 ~~which~~ that is not permitted under this section, and  
10 because of ~~such~~ the activity a depository financial  
11 services loan company's investment in the service  
12 corporation would be improper, within ninety days  
13 following written notice from the commissioner to the  
14 depository financial services loan company:

15 (A) ~~the~~ The improper activity shall be  
16 discontinued; or

17 (B) ~~the~~ The depository financial services loan  
18 company shall divest itself of its ownership or  
19 investment in the service corporation.

20 The service corporation or the depository financial  
21 services loan company may appeal the commissioner's



1 decision and request a hearing in accordance with  
2 chapter 91[-]; and

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

9 SECTION 43. Section 412:9-409, Hawaii Revised Statutes, is  
10 amended by amending subsection (i) to read as follows:

11 "(i) To the extent specified herein, a depository  
12 financial services loan company may invest its own assets in  
13 limited partnerships, limited liability partnerships, limited  
14 liability companies, or corporations formed to invest in  
15 residential properties [~~which~~] that will qualify for the low  
16 income housing tax credit under section 42 of the Internal  
17 Revenue Code of 1986, as amended, and under chapters 235 and  
18 241; provided that the total amount invested by a depository  
19 financial services loan company under this subsection in any one  
20 limited partnership, limited liability partnership, limited  
21 liability company, or corporation shall not, without the prior  
22 approval of the commissioner, exceed two per cent of the





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

9 SECTION 44. Section 412:11-103, Hawaii Revised Statutes,  
10 is amended to read as follows:

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

19 SECTION 45. Section 412:3-103, Hawaii Revised Statutes, is  
20 repealed.

21 [~~"§412:3-103 Amendments to articles and bylaws.~~ Upon the  
22 adoption of any amendment to the articles of incorporation or



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

10 SECTION 46. Section 412:3-113, Hawaii Revised Statutes, is  
11 repealed.

12 [~~"§412:3-113 Availability of statement of assets and~~  
13 ~~liabilities. Unless extended by the commissioner, within ten~~  
14 ~~days after submission to the commissioner of its June 30 and~~  
15 ~~December 31 financial statements, every Hawaii financial~~  
16 ~~institution, except a nondepository financial services loan~~  
17 ~~company or credit union, shall file with the commissioner its~~  
18 ~~statement of assets and liabilities which can readily be~~  
19 ~~provided to the public. The statement shall be in a form~~  
20 ~~prescribed by the commissioner and shall be prepared in~~  
21 ~~accordance with section 412:3-108. The statement of assets and~~



1 ~~liabilities shall be made available to the public by the~~  
2 ~~institution until the subsequent statement becomes available."]~~

3 SECTION 47. Section 412:3-115, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"§412:3-115 Access to safety deposit box. Unless~~  
6 ~~otherwise provided for in the lease for a safety deposit box,~~  
7 ~~access to the safety deposit box leased or rented to one or more~~  
8 ~~persons may be permitted by a financial institution to any~~  
9 ~~person leasing or renting the safety deposit box, including any~~  
10 ~~person purporting to be the personal representative, authorized~~  
11 ~~agent, guardian, trustee or other fiduciary for the lessee or~~  
12 ~~renter of the safety deposit box. The provisions of this~~  
13 ~~section shall be applicable even though the name of the person~~  
14 ~~appearing on the financial institution's records as the lessee~~  
15 ~~or renter is modified by a qualifying or descriptive term such~~  
16 ~~as agent or trustee or other word or phrase indicating that the~~  
17 ~~person may not be the lessee or renter of the safety deposit box~~  
18 ~~in their own right. No financial institution shall be liable~~  
19 ~~for any damages or penalty for allowing or refusing access to or~~  
20 ~~removal of the contents of the safety deposit box under the~~  
21 ~~provisions of this section."]~~



1 SECTION 48. 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 49. 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 50. Chapter 412, article 7, part IV, Hawaii  
2 Revised Statutes, is repealed.

3 SECTION 51. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 52. 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. (SD2)

