

JAN 25 2006

A BILL FOR AN ACT

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

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

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

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

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

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

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

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

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

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

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

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

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1 "Capital stock" means the units of interest, whether or not
2 having a par value, common or preferred, legally issued by a
3 financial institution or other corporation, which represents a
4 fractional ownership interest in the institution or corporation.
5 The term does not include shares or membership in a [~~mutual~~
6 ~~savings and loan association or~~] credit union.

7 "Hawaii financial institution" means:

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

1 company, trust company, credit union, or intra-Pacific
2 bank.

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

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

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

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

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1 (8) Contained in personnel, medical, and similar files
2 (including financial files), the disclosure of which
3 would constitute a clearly unwarranted invasion of
4 personal privacy; or

5 (9) Contained in inter-agency and intra-agency
6 communications, whether or not contained in written
7 memoranda, letters, tapes, or records that would not
8 be routinely available by law to a private party,
9 including but not limited to memoranda, reports, and
10 other documents prepared by the staff of the
11 commissioner.

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

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

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

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

21 "(g) Each year ~~[before July 2]~~, the commissioner may
22 charge each financial institution subject to examination by the

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1 commissioner [~~shall pay a~~] the sum of \$500 plus \$100 for each
2 office, agency, and branch office maintained by the financial
3 institution, [~~to the commissioner to~~] payment of which shall be
4 made before July 2 and thereafter credited to the compliance
5 resolution fund. The commissioner may establish, increase,
6 decrease, or repeal this fee when necessary pursuant to rules
7 adopted in accordance with chapter 91."

8 SECTION 6. Section 412:2-306, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

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

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

1 institution, or breached a fiduciary duty owed to the
2 financial institution;

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

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

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

21 (1) The institution-affiliated party has been charged in
22 any information, indictment, or complaint authorized

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1 by a United States attorney, state attorney general,
2 or similar legal officer, with the commission of, or
3 participation[7] in, a crime involving dishonesty or
4 breach of trust that is punishable by imprisonment for
5 a term exceeding one year under state or federal law;
6 and

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

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

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

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1 both. The notice of charges shall set forth a time and place
2 for a hearing to determine whether the removal or prohibition
3 order shall be issued."

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

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

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

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

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

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

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

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

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

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

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

4 (1) Minute books of meetings of shareholders, directors,
5 and executive committee;

6 (2) Amendments to articles of incorporation or association
7 or to the bylaws;

8 ~~[(2)]~~ (3) Capital stock ledger; and

9 ~~[(3)]~~ (4) General ledgers and trust ledgers.

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

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

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

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

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1 "§412:3-201 Application for preliminary approval to
2 organize financial institution. (a) Three[7] or more
3 individuals, of whom at least three are residents of the State,
4 or any company [~~which~~] that seeks to become a financial
5 institution holding company may file an application with the
6 commissioner for preliminary approval to organize a Hawaii
7 financial institution under this part. Banks seeking authority
8 to engage in the trust business through a division or department
9 of the bank, or through a subsidiary, shall apply for such
10 authority under section 412:5-205.

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

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

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

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

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

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1 executed by subscribers;

2 (D) Any underwriting agreement or other agreement for
3 the purchase or distribution of the capital
4 stock;

5 (E) Any escrow agreements or other agreement for the
6 holding of the purchase proceeds of the capital
7 stock;

8 (F) Proposed advertising materials;

9 (G) If the offer and sale of the capital stock is
10 subject to the Securities Act of 1933 and
11 regulations thereunder, a copy of the
12 registration statement most recently filed with
13 the federal Securities and Exchange Commission or
14 any other notices or other filings in lieu of
15 registration required or permitted by that act or
16 regulation and any subsequent amendments thereto;

17 (H) If the offer and sale of the capital stock is
18 subject to chapter 485, a copy of the
19 registration or qualification statement most
20 recently filed with the commissioner of
21 securities and any subsequent amendments thereto;
22 and

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

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- 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;

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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 are utilized by any federal regulatory
8 agency in processing similar applications. The application
9 shall be accompanied by an application fee of \$9,000, or such
10 greater amount as the commissioner shall establish by rule
11 pursuant to chapter 91. The application fee shall not be
12 refundable.

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

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1 Information determined by the commissioner to be confidential,
2 pursuant to an applicant's request or otherwise, shall not be
3 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 15. 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 will be a subsidiary of a holding company
12 shall furnish the commissioner with the following additional
13 information regarding the holding company, unless waived by the
14 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;

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- 1 (3) ~~[Financial]~~ The financial statements, employment
2 history, education, management experience, and other
3 biographical information for all of its executive
4 officers and 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, 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 shall include:
- 17 (A) Information regarding the solicitation plan
18 by which the applicant and the proposed holding
19 company proposes to conduct the solicitation of
20 subscribers;
- 21 (B) Information regarding the classes of shares,
22 respective quantities of shares for each class,

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- 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

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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

22 ~~[(6)]~~ (10) Any other information that the commissioner may

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1 require.

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

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

6 "**§412:3-203 Deferral of application requirements.** For
7 good cause, the commissioner may defer specific application
8 requirements until the filing of an application for a charter or
9 [a] license."

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

12 "**§412:3-204 Publication of notice.** (a) Once the
13 application to organize a Hawaii financial institution is
14 complete and has been accepted by the commissioner, the
15 applicant shall publish a notice at least once a week for three
16 successive weeks in a newspaper of general circulation in each
17 county in this State where the proposed financial institution
18 intends to establish a principal office, branch, or agency.

19 (b) The notice shall be in a form prescribed by the
20 commissioner and shall state the fact that an application has
21 been filed, the names of the applicant and organizers, the
22 location of the financial institution's proposed ~~[place]~~ places

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

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

14 **"§412:3-206 Grant of preliminary approval to organize a**
15 **financial institution.** (a) Following the expiration of the
16 time for the submission of written comments or the completion of
17 an informational and comment proceeding, the commissioner shall
18 issue a written decision and order on the application for
19 preliminary approval to organize. If the commissioner approves
20 the application, the applicant shall become an "applicant in
21 organization," and may take all steps necessary to complete
22 organization and file an application for a charter or license.

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

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

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

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

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- 1 contrary, including without limitation a finding that
2 such director, officer, or controlling person has:
- 3 (A) Been convicted of, or has pleaded nolo contendere
4 to, any crime involving an act of fraud or
5 dishonesty;
- 6 (B) Consented to or suffered a judgment in any civil
7 action based upon conduct involving an act of
8 fraud or dishonesty;
- 9 (C) Consented to or suffered the suspension or
10 revocation of any professional, occupational, or
11 vocational license based upon conduct involving
12 an act of fraud or dishonesty;
- 13 (D) Wilfully made or caused to be made in any
14 application or report filed with the
15 commissioner, or in any proceeding before the
16 commissioner, any statement which was at the time
17 and in the light of the circumstances under which
18 it was made false or misleading with respect to
19 any material fact, or has wilfully omitted to
20 state in any application or report any material
21 fact which was required to be stated therein; or
22 (E) Wilfully committed any violation of, or has

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1 wilfully aided, abetted, counseled, commanded,
2 induced, or procured the violation by any other
3 person of, any provision of this chapter or of
4 any rule or order issued under this chapter;

5 [and]

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

8 (5) The articles of incorporation of the financial
9 institution comply in all respects with this chapter
10 and chapter 414; and

11 (6) The capital stock solicitation submission is complete
12 and the solicitation will not affect the safety or
13 soundness of the proposed financial institution or
14 harm the public interest.

15 (c) In granting preliminary approval to organize, the
16 commissioner may impose any conditions and restrictions that are
17 in the public interest, including but not limited to requiring
18 the applicant to fulfill representations contained in its
19 application and agreements made with the commissioner during the
20 application process.

21 (d) Upon the issuance of a written decision and order
22 granting the application for preliminary approval to organize,

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1 the articles of incorporation may be delivered by the applicant
2 in organization to the director of commerce and consumer affairs
3 for filing and, if accepted for filing, the financial
4 institution shall have corporate existence. Although the
5 proposed financial institution may have corporate existence, it
6 may not transact any financial institution business until it has
7 received a financial institution charter or license under this
8 article; provided that the financial institution may conduct any
9 transaction that is incidental and necessary to prepare to do a
10 financial institution business and obtain a charter or license.

11 (e) The applicant and the proposed Hawaii financial
12 institution shall not solicit subscriptions for the capital
13 stock of the Hawaii financial institution until the written
14 decision and order granting the application for preliminary
15 approval to organize has been issued and the articles of
16 incorporation have been accepted for filing by the director of
17 commerce and consumer affairs. The approval shall not
18 constitute a determination that the applicant has complied with
19 chapter 485 or any other state or federal law."

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

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

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

11 "**§412:3-212 Final application for charter or license.** (a)
12 After completing its organization of the Hawaii financial
13 institution, the applicant in organization may file with the
14 commissioner an application for a charter or license to engage
15 in the business of a Hawaii financial institution. The
16 application shall be in a form prescribed by the commissioner
17 and, unless waived by the commissioner, shall contain the
18 following information:

19 (1) A sworn statement by the applicant in organization
20 that it has complied with all requirements of law
21 concerning the organization of the proposed financial
22 institution, including but not limited to the

- 1 requirement that the full amount of its required
2 capital and surplus has been paid in or deposited in
3 escrow under terms satisfactory to the commissioner;
- 4 (2) The names and addresses of all common and preferred
5 shareholders, and elected or appointed directors and
6 executive officers of the proposed financial
7 institution and any holding company of the financial
8 institution, and the number of shares owned by each;
- 9 (3) A description of any material changes which have
10 occurred in the financial institution's organizers or
11 the applicant in organization, its business plan, and
12 its financial condition since the issuance of the
13 preliminary approval to organize, accompanied by
14 updated financial statements of the financial
15 institution, any holding company of the financial
16 institution, the applicant in organization, and all
17 executive officers and directors of the financial
18 institution and any holding company of the financial
19 institution;
- 20 (4) Evidence that all federal deposit insurance, fidelity
21 bonds, and any other insurance [~~required by the order~~
22 ~~of preliminary approval~~], as represented in the

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1 application for preliminary approval to organize, have
2 been or will be obtained[7] and in effect prior to
3 opening;

4 (5) A description of the financial institution's disaster
5 recovery policies and programs, security programs, and
6 all vending contractors for electronic data processing
7 and servicing[7] that are or will be in effect prior
8 to opening; and

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

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

14 (c) If the commissioner is satisfied that the financial
15 institution and, if applicable, its holding company have
16 fulfilled all the requirements of law[7] and the grounds for
17 preliminary approval, and that the financial institution is
18 qualified to engage in the business of a financial institution,
19 the commissioner shall issue a written decision and order
20 approving the application. The order may restrict the payment
21 of dividends for a period of up to three years, and may contain
22 any other conditions and restrictions on the financial

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

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

15 "§412:3-506 **Opening or relocating** ~~[automatic teller~~
16 ~~machine or]~~ **support facility**. A Hawaii financial institution
17 which opens or relocates ~~[an automatic teller machine or]~~ a
18 support facility shall within thirty days thereafter submit a
19 letter to the commissioner containing the following information:

20 (1) The location of the ~~[automatic teller machine or]~~
21 support facility;

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1 (2) A description of the type of functions which the
2 ~~[automatic teller machine or]~~ support facility will
3 perform; and

4 (3) The date or anticipated date of opening or
5 relocation."

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

8 "**§412:3-508 Closing ~~[automatic teller machine or]~~ support**
9 **facility.** A Hawaii financial institution shall provide notice
10 to the commissioner of its closure of ~~[an automatic teller~~
11 ~~machine or]~~ a support facility within thirty days of the
12 closing. The notice shall contain the location of the
13 ~~[automatic teller machine or]~~ support facility closed and the
14 date of closing."

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

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

20 (1) If a Hawaii financial institution is a stock
21 institution, the holders of two-thirds of each class
22 of the issued and outstanding capital stock of the

1 financial institution entitled to vote or such greater
2 majority as may be provided by the articles of
3 incorporation of the Hawaii financial institution
4 shall be required to approve any action under this
5 part;

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

10 ~~[(3)]~~ (2) If a Hawaii financial institution is a credit
11 union, a majority of members present in person at any
12 meeting shall be required to approve any action under
13 this part."

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

16 "§412:3-605 Notice to ~~[mutual savings and loan or] credit~~
17 union member ~~[, no right of dissent]~~. ~~[(a)]~~ Wherever the
18 approval of a transaction is required by this part by the
19 members of a ~~[mutual savings and loan association or a]~~ credit
20 union, notice of a ~~[+]meeting[+] of its members, which may be an~~
21 annual or a special ~~[+]meeting, [+] shall be given to each member~~
22 entitled to vote. The notice shall be provided not less than

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1 twenty days before the date of the meeting. The notice shall
2 state that the purpose of the meeting is to vote upon a
3 transaction covered by this part and shall be accompanied by a
4 detailed description of the proposed transaction or a summary of
5 the transaction and a copy of the plan of conversion, merger,
6 consolidation, sale of assets or assumption of liabilities, or
7 voluntary cessation of business and dissolution approved by the
8 board of directors.

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

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

14 "**§412:3-608 Conversion to another type of financial**
15 **institution.** (a) A financial institution of any type, whether
16 federal or State, may convert to a Hawaii financial institution of
17 any other type if the institution and its holding company or
18 holding companies, if any, shall have complied with all
19 requirements, conditions, and limitations imposed by this part and
20 by federal law, if applicable.

21 (b) If the converting institution is a Hawaii financial
22 institution, its shareholders or members shall approve a

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1 conversion to another type of financial institution at a meeting
2 duly called and noticed and upon a vote which satisfies the
3 requirements of section 412:3-604.

4 (c) The financial institution shall file an application with
5 the commissioner pursuant to section 412:3-603 for a charter or
6 license to engage in the business of the type of financial
7 institution to which it will convert. The application shall be
8 accompanied by:

9 (1) A certificate signed by two executive officers of
10 the financial institution, verifying the validity of the
11 meeting of the shareholders or members, that the
12 requisite vote has been obtained, and that the attached
13 copy of the resolution to convert adopted at the meeting
14 is true and correct, or that the applicant has complied
15 with all federal laws and regulations regarding the
16 conversion, as the case may be;

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

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

21 (d) The commissioner may require notice to be given to the
22 public as may be deemed appropriate. The commissioner may

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

4 (e) The charter or license shall be granted only if the
5 commissioner is satisfied that the granting of the charter or
6 license will not impair the safety or soundness of the financial
7 institution or any other financial institution, and that the
8 applicant meets all the requirements set forth in this chapter for
9 the type of financial institution for which the application has
10 been filed. The requirements shall include, but not be limited
11 to, the appropriate location of offices, capital structure,
12 business experience, the character of its executive officers and
13 directors and compliance with all applicable provisions of chapter
14 414. If the resulting Hawaii financial institution is a new
15 corporation to be formed under chapter 414, the director of
16 commerce and consumer affairs shall not file the articles of
17 incorporation until the application for a charter or license to
18 engage in the business of the type of financial institution to
19 which it will convert shall have been approved by the commissioner
20 in writing. The commissioner may impose any restrictions and
21 conditions on the operation of the resulting financial institution

1 as the commissioner deems appropriate and consistent with federal
2 law.

3 (f) If the resulting Hawaii financial institution is an
4 existing corporation formed under chapter 414, the conversion
5 shall be effective upon the effective date of the new charter or
6 license granted by the commissioner after all provisions of this
7 section and of federal law shall have been complied with in full.
8 If the resulting Hawaii financial institution is a new corporation
9 to be formed under chapter 414, the effective date of the new
10 charter or license shall be the date of filing of the articles of
11 incorporation by the director of commerce and consumer affairs.

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

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

18 " ~~[(e) A Hawaii mutual savings and loan association may~~
19 ~~merge into a Hawaii stock financial institution or a federal~~
20 ~~financial institution whose operations are principally conducted~~
21 ~~in this State, or may consolidate with a Hawaii stock financial~~
22 ~~institution or a federal financial institution whose operations~~

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1 ~~are conducted principally in this State into a new resulting~~
2 ~~institution; provided that the resulting institution shall be a~~
3 ~~Hawaii stock financial institution or a federal financial~~
4 ~~institution, and shall not be a Hawaii mutual savings and loan~~
5 ~~association. The merger or consolidation shall be effected~~
6 ~~pursuant to the procedures, conditions, and requirements for,~~
7 ~~and with the effect of, the merger or consolidation of two or~~
8 ~~more stock financial institutions pursuant to this section and~~
9 ~~to chapter 414, as though the Hawaii mutual savings and loan~~
10 ~~association was a stock financial institution; except that the~~
11 ~~members of the participating Hawaii mutual savings and loan~~
12 ~~association shall approve the plan of merger or consolidation at~~
13 ~~a meeting duly called and noticed and upon a vote which~~
14 ~~satisfies the requirements of sections 412:3-604 and 412:3-605.~~
15 ~~If the resulting institution is a Hawaii financial institution,~~
16 ~~the director of commerce and consumer affairs shall not file~~
17 ~~articles of merger or consolidation until the plan of merger or~~
18 ~~consolidation shall have been approved by the commissioner in~~
19 ~~writing. If the resulting institution is a federal financial~~
20 ~~institution, the resulting federal financial institution shall~~
21 ~~file with the director of commerce and consumer affairs a~~
22 ~~confirmation in writing by the commissioner of the date and time~~

1 ~~of the merger or consolidation, together with the appropriate~~
2 ~~filing fee pursuant to chapter 414.~~

3 ~~(f)]~~ (e) A Hawaii credit union may merge with a Hawaii
4 credit union or federal credit union. The merger shall be
5 effected pursuant to the procedures, conditions, and
6 requirements for, and with the effect of, the merger of two or
7 more stock financial institutions pursuant to this section and
8 to chapter 414, as though the credit unions were stock financial
9 institutions; except that the plan of merger shall be approved
10 by a majority of the members of the board of directors of each
11 participating credit union and by the members of the
12 participating credit unions at a meeting duly called and noticed
13 and upon a vote which satisfies the requirements of sections
14 412:3-604 and 412:3-605.

15 ~~(g)]~~ (f) Prior to or after the vote of the shareholders
16 or members upon the plan of merger or consolidation, but prior
17 to delivery of articles of merger or consolidation and plan of
18 merger or consolidation to the director of commerce and consumer
19 affairs, the participating financial institutions shall file an
20 application with the commissioner pursuant to section 412:3-603
21 for approval of the proposed merger or consolidation. The
22 application shall be accompanied by:

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- 1 (1) The plan of merger or consolidation;
- 2 (2) A certificate signed by two executive officers of each
3 of the participating institutions, verifying that the
4 plan of merger or consolidation has been approved by
5 the board of directors of the participating financial
6 institution and that the attached copy of the
7 resolution approving the proposed merger or
8 consolidation is true and correct;
- 9 (3) If any participating financial institution is a
10 federal financial institution or a financial
11 institution chartered or licensed under the laws of
12 any state other than this State, any possession or
13 territory of the United States, or any foreign
14 country, a certificate signed by two executive
15 officers verifying that the financial institution has
16 complied, or will comply with all federal laws and
17 regulations or all laws and regulations of the
18 jurisdiction under which it is chartered or licensed
19 relating to the merger or consolidation;
- 20 (4) If the resulting financial institution is to be a
21 Hawaii financial institution, the information required
22 from applicants for approval to organize a Hawaii

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1 financial institution of the same type as the proposed
2 resulting Hawaii financial institution;

3 (5) If a Hawaii financial institution is seeking to merge
4 or consolidate with a financial institution of another
5 type, the information required from applicants for
6 approval to convert to another type of financial
7 institution; and

8 (6) Any other information that the commissioner may
9 require.

10 [~~(h)~~] (g) The commissioner may require notice to be given
11 to the public as may seem appropriate. The commissioner may
12 conduct an examination of the institution as provided under
13 article 2, part II. The cost of any examination shall be
14 assessed against and paid by the institution pursuant to section
15 412:2-105.

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

18 (1) Any resulting Hawaii financial institution would meet
19 all the requirements under this chapter for a charter
20 or license to the same extent that it would if it were
21 applying for a new charter or license;

22 (2) Any resulting financial institution would be

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- 1 adequately capitalized;
- 2 (3) The plan of merger or consolidation is fair to
- 3 creditors and the shareholders or members of all
- 4 participating institutions;
- 5 (4) The participating institutions have complied, or will
- 6 comply, with all requirements, conditions, and
- 7 limitations imposed by federal law or regulation or by
- 8 the law or regulation of the jurisdiction under which
- 9 an institution is chartered or licensed with respect
- 10 to the merger or consolidation;
- 11 (5) The overall experience, moral character, or integrity
- 12 of the proposed directors and executive officers of
- 13 the resulting institution is consistent with the
- 14 interests of the depositors, beneficiaries, creditors,
- 15 shareholders, or members of the financial institution,
- 16 or in the public interest;
- 17 (6) The merger or consolidation will not jeopardize the
- 18 safety or soundness of any participating institutions
- 19 or the resulting institution, and is not otherwise
- 20 contrary to the public interest;
- 21 (7) The merger or consolidation will not substantially
- 22 lessen competition or tend to create a monopoly or

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1 restraint of trade in any section of the country that
2 includes this State or a part thereof, or that any
3 anti-competitive effects are clearly outweighed in the
4 public interest by the probable effect of the merger
5 or consolidation in meeting the convenience and needs
6 of the community to be served;

7 (8) The merger or consolidation will promote the
8 convenience, needs, and advantage of the general
9 public particularly in the communities in which the
10 participating and resulting financial institutions
11 conduct or will conduct their business;

12 (9) The grounds for approval of a conversion to another
13 type of financial institution pursuant to section
14 412:3-608 have been met in the case of a participating
15 Hawaii financial institution seeking to merge or
16 consolidate with a financial institution of a
17 different type; and

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

20 [~~(j)~~] (i) In the case of a merger, the charter or license
21 of the participating depository financial institution or trust
22 company which is the resulting institution shall continue as the

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1 charter or license of the resulting depository financial
2 institution or trust company upon the effective date of the
3 merger. In the case of a consolidation, when the commissioner
4 is satisfied that the participating depository financial
5 institutions or trust companies have complied with all state and
6 federal law with regard to the consolidation, the commissioner
7 shall issue a charter or license to the consolidated resulting
8 Hawaii depository financial institution or trust company. A
9 nondepository financial services loan company license may be
10 issued to the resulting financial institution in conjunction
11 with a merger or consolidation upon compliance with all
12 applicable laws regarding the issuance of a license to a
13 nondepository financial services loan company."

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

16 "(d) If a converting or participating institution is a trust
17 company or a bank which is authorized to do a trust business, the
18 resulting institution, by operation of law and without further
19 court order, transfer, substitution, act, or deed shall succeed to
20 the rights, properties, assets, investments, deposits, demands,
21 agreements, and trusts of the converting or participating
22 institutions under all trusts, personal representations,

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1 executorships, administrations, guardianships, agencies, and all
2 other fiduciary or representative capacities as though the
3 resulting institution had originally assumed the same and shall
4 succeed to and be entitled to take and execute the appointment to
5 all trusteeships, personal representations, executorships,
6 guardianships, conservatorships, and other fiduciary and
7 representative capacities to which the converting or participating
8 institution may be named or is thereafter named in wills, whether
9 probated before or after the conversion, merger, or consolidation,
10 or to which it is or may be named or appointed by any other
11 instrument."

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

14 "(a) Unless the commissioner shall have given prior
15 approval or shall have waived the requirement for approval
16 pursuant to subsection [~~(e)~~], (e), no financial institution
17 holding company shall merge or consolidate with any other
18 corporation if the effect of the merger or consolidation shall
19 be to change the direct or indirect control of any Hawaii
20 financial institution."

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

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

4 (1) The overall experience, moral character, or integrity
5 of any person who would acquire control of a Hawaii
6 financial institution or financial institution
7 holding company or become a financial institution
8 holding company indicates that it would not be in the
9 interest of the depositors, beneficiaries, creditors,
10 or shareholders of the Hawaii financial institution
11 or the financial institution holding company, or in
12 the public interest, to permit the person to control
13 the Hawaii financial institution or the financial
14 institution holding company or to become a financial
15 institution holding company;

16 (2) The acquisition will not promote the convenience,
17 needs, and advantage of the general public,
18 particularly in the community in which the affected
19 institution conducts its business;

20 (3) The effect of the proposed acquisition may be
21 substantially to lessen competition or tend to create
22 a monopoly or restraint of trade in any section of the

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1 country that includes this State or a part thereof,
2 and that these anti-competitive effects are not
3 clearly outweighed in the public interest by the
4 probable effect of the acquisition in meeting the
5 convenience and needs of the community to be served;

6 (4) The financial condition of any person who would
7 acquire control of a Hawaii financial institution or a
8 financial institution holding company or become a
9 financial institution holding company may jeopardize
10 the safety and soundness of the Hawaii financial
11 institution or the financial institution holding
12 company or prejudice the interests of the depositors,
13 beneficiaries, creditors, or shareholders of the
14 Hawaii financial institution or the financial
15 institution holding company;

16 (5) Any plan or proposal to liquidate, merge, or
17 consolidate, or make any other major change in the
18 business, corporate structure, or management of the
19 Hawaii financial institution or the financial
20 institution holding company or any of its significant
21 subsidiaries is not fair and reasonable to the
22 depositors, beneficiaries, creditors, or shareholders

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1 of the Hawaii financial institution or the financial
2 institution holding company or any of its significant
3 subsidiaries; or

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

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

8 "**§412:5-203 Operating subsidiaries.** (a) "Operating
9 subsidiary" means a corporation other than a corporation
10 referred to in section 412:5-305(g) (2) to (8) of which more than
11 eighty per cent of the voting securities is held by a bank.

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

15 (c) No bank may acquire, establish, or hold the voting
16 securities of an operating subsidiary without the commissioner's
17 prior written approval; provided[7] that such approval shall not
18 be required so long as the bank's aggregate net contributions to
19 the capital of the operating subsidiary remain less than ten per
20 cent of the bank's capital and surplus; provided further[7] that
21 the bank shall comply with the notification requirements of
22 subsection (f). Unless otherwise provided by law or rule, all

1 provisions of this chapter applicable to the operations of the
2 parent bank shall be applicable to the operations of its
3 operating subsidiary. Unless otherwise provided by law or rule,
4 pertinent accounts of the parent bank and its operating
5 subsidiaries shall be consolidated for the purpose of applying
6 applicable statutory limitations such as contained in section
7 412:5-302.

8 (d) The bank shall file an application with the
9 commissioner in a form approved by the commissioner. The
10 application shall be accompanied by a fee the amount of which
11 shall be prescribed by rule. The application shall contain the
12 following information concerning the proposed operating
13 subsidiary:

- 14 (1) The name and date for commencement of operations;
- 15 (2) The specific location;
- 16 (3) The activities and nature of business;
- 17 (4) The ownership, amount, and nature of the investment;
- 18 and
- 19 (5) Any other information that the commissioner may
20 require.

21 (e) If after appropriate examination and investigation,
22 the commissioner is satisfied that the acquisition,

1 establishment, or holding the voting securities of the operating
2 subsidiary will comply with this section, the commissioner shall
3 approve [~~such~~] the application in writing, with [~~such~~]
4 conditions as the commissioner may deem appropriate.

5 (f) The bank shall notify the commissioner in writing
6 within five days of acquiring or establishing an operating
7 subsidiary or performing new activities in the operating
8 subsidiary. The notification shall provide the information
9 specified in subsection (d).

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

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

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

3 "(h) To the extent specified herein, a bank may invest its
4 own assets in limited partnerships, limited liability
5 partnerships, limited liability companies, or corporations formed
6 to invest in residential properties which will qualify for the low
7 income housing tax credit under section 42 of the Internal Revenue
8 Code of 1986, as amended, and under chapters 235 and 241; provided
9 that the total amount invested by a bank under this subsection in
10 any one limited partnership, limited liability partnership,
11 limited liability company, or corporation shall not, without the
12 prior approval of the commissioner, exceed two per cent of the
13 bank's capital and surplus and the aggregate amount invested under
14 this subsection shall not, without the prior approval of the
15 commissioner, exceed five per cent of the bank's capital and
16 surplus. In no case shall the aggregate amount invested by a bank
17 under this subsection exceed ten per cent of the bank's capital
18 and surplus."

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

21 "(a) In order to obtain prior approval of the
22 commissioner, the applicant shall file the application required

1 by and comply with the provisions of article 3. [~~In addition to~~
2 ~~any information required under article 3, the~~] The application
3 shall contain the following information:

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

6 (2) A certificate from the appropriate regulatory body
7 where its home office is located, indicating that the
8 applicant is in good standing in that jurisdiction[~~-~~];

9 and

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

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

13 "**§412:6-203 Service corporations.** (a) "Service
14 corporation" means a corporation whose stock is owned entirely
15 by one or more state or federally chartered savings banks or
16 savings and loan associations.

17 (b) Subject to the approval of the commissioner, a savings
18 bank may form and own a service corporation only if the
19 institution or institutions participating in the formation of
20 the corporation are in a safe and sound condition, and the
21 amount of stock to be owned by each will not adversely affect
22 their capital or solvency.

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1 (c) A savings bank may not own or invest in any capital
2 stock, securities, or other interest of a service corporation
3 if, together with its investment in the capital stock,
4 securities, or other interest of any other service corporations,
5 its aggregate outstanding investment in all service corporations
6 will exceed six per cent of the savings bank's assets.

7 (d) No service corporation may be formed except upon
8 written approval by the commissioner of an application submitted
9 in a form satisfactory to the commissioner. The approval shall
10 be subject to the written acknowledgement by the applicant that
11 the service corporation shall be subject to: (1) the supervision
12 of the commissioner; (2) examination pursuant to this section;
13 and (3) such other terms and conditions as the commissioner
14 deems appropriate.

15 (e) Every service corporation shall permit the
16 commissioner to examine its books, records, and activities from
17 time to time, to the extent and whenever the commissioner deems
18 necessary to determine the propriety of any investment by a
19 savings bank in such corporation and whether the activities of
20 the corporation pose a significant risk of loss to the parent
21 savings bank. The corporation shall pay the entire cost of such
22 examination. In addition, a service corporation, at its sole

1 expense, shall cause an independent audit to be made of its
2 books, records, and activities if and when deemed necessary by
3 the commissioner.

4 (f) A service corporation may engage in activities
5 permitted for a service corporation of a federally chartered
6 savings bank or savings and loan association and such other
7 activities as the commissioner may approve.

8 (g) A service corporation may engage in permitted
9 activities directly or through one or more subsidiaries or joint
10 ventures.

11 (h) Whenever a service corporation engages in an activity
12 which is not permitted under this section, and because of such
13 activity a savings bank's investment in the service corporation
14 would be improper, within ninety days following written notice
15 from the commissioner to the savings bank: (1) the improper
16 activity shall be discontinued; or (2) the savings bank shall
17 divest itself of its ownership or investment in the service
18 corporation. The service corporation or the savings bank may
19 appeal the commissioner's decision and request a hearing in
20 accordance with chapter 91.

21 (i) The savings bank shall notify the commissioner in
22 writing within five days of closing a service corporation. The

1 notification shall provide the date of closing, the reasons for
2 the closure, and the means by which the assets and liabilities
3 of the service corporation were disposed."

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

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

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

14 (c) No savings bank may acquire, establish, or hold the
15 voting securities of an operating subsidiary without the
16 commissioner's prior written approval; provided[7] that [~~such~~]
17 approval shall not be required so long as the savings bank's
18 aggregate net contributions to the capital of the operating
19 subsidiary remain less than ten per cent of the savings bank's
20 capital and surplus; provided further[7] that the savings bank
21 shall comply with the notification requirements of subsection

22 (f). Unless otherwise provided by law or rule, all provisions

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1 of this chapter applicable to the operations of the parent
2 savings bank shall be applicable to the operations of its
3 operating subsidiary. Unless otherwise provided by law or rule,
4 pertinent accounts of the parent savings bank and its operating
5 subsidiaries shall be consolidated for the purpose of applying
6 applicable statutory limitations such as contained in section
7 412:6-303.

8 (d) The savings bank shall file an application with the
9 commissioner in a form approved by the commissioner. The
10 application shall be accompanied by a fee, the amount of which
11 shall be prescribed by rule. The application shall contain the
12 following information concerning the proposed operating
13 subsidiary:

- 14 (1) The name and date for commencement of operations;
- 15 (2) The specific location;
- 16 (3) The activities and nature of business;
- 17 (4) The ownership, amount, and nature of the investment;

18 and

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

21 (e) If after appropriate examination and investigation,
22 the commissioner is satisfied that the acquisition,

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1 establishment, or holding the voting securities of the operating
2 subsidiary will comply with this section, the commissioner shall
3 approve [~~such~~] the application in writing, with [~~such~~]
4 conditions as the commissioner may deem appropriate.

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

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

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

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

3 "(h) To the extent specified herein, a savings bank may
4 invest its own assets in limited partnerships, limited liability
5 partnerships, limited liability companies, or corporations
6 formed to invest in residential properties which will qualify
7 for the low income housing tax credit under section 42 of the
8 Internal Revenue Code of 1986, as amended, and under chapters
9 235 and 241; provided that the total amount invested by a
10 savings bank under this subsection in any one limited
11 partnership, limited liability partnership, limited liability
12 company, or corporation shall not, without the prior approval of
13 the commissioner, exceed two per cent of the savings bank's
14 capital and surplus and the aggregate amount invested under this
15 subsection shall not, without the prior approval of the
16 commissioner, exceed five per cent of the savings bank's capital
17 and surplus. In no case shall the aggregate amount invested by
18 a savings bank under this subsection exceed ten per cent of the
19 savings bank's capital and surplus."

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

1 **"§412:7-100 Definition.** In this article, "savings and
2 loan association" means a corporation [~~or mutual association~~]
3 which has the authority to operate as a savings and loan
4 association under this chapter."

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

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

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

17 (c) A savings and loan association may not own or invest
18 in any capital stock, securities, or other interest of a service
19 corporation if, together with its investment in the capital
20 stock, securities, or other interest of any other service
21 corporations, its aggregate outstanding investment in all

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1 service corporations will exceed six per cent of the savings and
2 loan association's assets.

3 (d) No service corporation may be formed except upon
4 written approval by the commissioner of an application submitted
5 in a form satisfactory to the commissioner. The approval shall
6 be subject to the written acknowledgement by the applicant that
7 the service corporation shall be subject to: (1) the supervision
8 of the commissioner; (2) examination pursuant to this section;
9 and (3) [~~sueh~~] other terms and conditions as the commissioner
10 deems appropriate.

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

1 (f) A service corporation may engage in activities
2 permitted for a service corporation of a federally chartered
3 savings and loan association and [~~such~~] other activities as the
4 commissioner may approve.

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

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

19 (i) The savings and loan association shall notify the
20 commissioner in writing within five days of closing a service
21 corporation. The notification shall provide the date of closing,

1 the reasons for the closure, and the means by which the assets
2 and liabilities of the service corporation were disposed."

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

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

10 (b) An operating subsidiary may engage in activities which
11 are authorized for a savings and loan association or which are
12 usual or incidental to the business of a savings and loan
13 association.

14 (c) No savings and loan association may acquire,
15 establish, or hold the voting securities of an operating
16 subsidiary without the commissioner's prior written approval;
17 provided[~~7~~] that [~~such~~] approval shall not be required so long
18 as the savings and loan association's aggregate net
19 contributions to the capital of the operating subsidiary remain
20 less than ten per cent of the savings and loan association's
21 capital and surplus; provided further[~~7~~] that the savings and
22 loan association shall comply with the notification requirements

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

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

- 15 (1) The name and date for commencement of operations;
- 16 (2) The specific location;
- 17 (3) The activities and nature of business;
- 18 (4) The ownership, amount, and nature of the investment;
- 19 and
- 20 (5) Any other information that the commissioner may
21 require.

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

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

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

20 (h) The savings and loan association shall notify the
21 commissioner in writing within five days of closing an operating
22 subsidiary. The notification shall provide the date of closing,

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1 the reasons for the closure, and the means by which the assets
2 and liabilities of the operating subsidiary were disposed."

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

5 "(h) To the extent specified herein, a savings and loan
6 association may invest its own assets in limited partnerships,
7 limited liability partnerships, limited liability companies, or
8 corporations formed to invest in residential properties which
9 will qualify for the low income housing tax credit under section
10 42 of the Internal Revenue Code of 1986, as amended, and under
11 chapters 235 and 241; provided that the total amount invested by
12 a savings and loan association under this subsection in any one
13 limited partnership, limited liability partnership, limited
14 liability company, or corporation shall not, without the prior
15 approval of the commissioner, exceed two per cent of the savings
16 and loan association's capital and surplus and the aggregate
17 amount invested under this subsection shall not, without the
18 prior approval of the commissioner, exceed five per cent of the
19 savings and loan association's capital and surplus. In no case
20 shall the aggregate amount invested by a savings and loan
21 association under this subsection exceed ten per cent of the
22 savings and loan association's capital and surplus."

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

3 "§412:8-201 **Fiduciary powers.** Every trust company shall
4 have the power and authority to serve as a trustee, personal
5 representative, conservator, assignee for the benefit of others,
6 or receiver, subject to the duties imposed by the instrument or
7 by law. As used herein, the term "instrument" means any trust
8 agreement, declaration, or other agreement, any valid will, or
9 any court order or decree in any probate, guardianship,
10 conservatorship, or receivership. Pursuant thereto, a trust
11 company is authorized and empowered to exercise powers as
12 provided by law, including, but not limited to:

- 13 (1) Perform such acts as may be prudent, consistent with,
14 and reasonably necessary to carry out the legitimate
15 purposes of such instrument;
- 16 (2) Administer, fulfill, and discharge all lawful duties
17 imposed by instrument or by law, for such remuneration
18 as may be agreed upon or provided by law;
- 19 (3) Acquire principal and income on behalf of the estate
20 administered by the trust company, including without
21 limitation real property, insurance proceeds, rents,

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1 interest, dividends, mortgages, bonds, bills, notes,
2 and securities;

3 (4) Buy, sell, issue, negotiate, register, transfer, or
4 countersign certificates of stock, bonds, or other
5 obligations of any corporation, association, or
6 municipality;

7 (5) Lease, purchase, hold, and convey real and personal
8 property to the extent authorized by the instrument or
9 by law, or consistent with the purposes thereof; and

10 (6) Execute and issue on behalf of the estate any documents
11 necessary to the prudent administration thereof,
12 including without limitation any receipts,
13 certificates, papers, and contracts which shall be
14 signed by an appropriate trust officer designated by
15 the trust company."

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

18 "**§412:9-403 Service corporations.** Subject to the approval
19 of the commissioner, one or more depository financial services
20 loan companies, may form and own a service corporation only
21 under the following conditions:

22 (1) The depository financial services loan company or

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

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

16 (3) No service corporation may be formed except upon
17 written approval by the commissioner of an application
18 submitted in a form satisfactory to the commissioner.
19 The approval shall be subject to the written
20 acknowledgment by the applicant that the service
21 corporation shall be subject to: (A) the supervision
22 of the commissioner; (B) examination pursuant to this

1 section; and (C) [~~such~~] other terms and conditions as
2 the commissioner deems appropriate;

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

17 (5) A service corporation may engage in any activity
18 permitted to its parent depository financial services
19 loan company and any other activity as the commissioner
20 may approve;

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- 1 (6) A service corporation may engage in permitted
2 activities directly or through one or more subsidiaries
3 or joint ventures; ~~and~~
- 4 (7) Whenever a service corporation engages in an activity
5 which is not permitted under this section, and because
6 of ~~such~~ the activity a depository financial services
7 loan company's investment in the service corporation
8 would be improper, within ninety days following written
9 notice from the commissioner to the depository
10 financial services loan company: (A) the improper
11 activity shall be discontinued; or (B) the depository
12 financial services loan company shall divest itself of
13 its ownership or investment in the service corporation.
14 The service corporation or the depository financial
15 services loan company may appeal the commissioner's
16 decision and request a hearing in accordance with
17 chapter 91[-]; and
- 18 (8) The depository financial services loan company shall
19 notify the commissioner in writing within five days of
20 closing a service corporation. The notification shall
21 provide the date of closing, the reasons for the

1 closure, and the means by which the assets and
2 liabilities of the service corporation were disposed."

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

5 "(i) To the extent specified herein, a depository
6 financial services loan company may invest its own assets in
7 limited partnerships, limited liability partnerships, limited
8 liability companies, or corporations formed to invest in
9 residential properties which will qualify for the low income
10 housing tax credit under section 42 of the Internal Revenue Code
11 of 1986, as amended, and under chapters 235 and 241; provided
12 that the total amount invested by a depository financial
13 services loan company under this subsection in any one limited
14 partnership, limited liability partnership, limited liability
15 company, or corporation shall not, without the prior approval of
16 the commissioner, exceed two per cent of the depository
17 financial services loan company's capital and surplus and the
18 aggregate amount invested under this subsection shall not,
19 without the prior approval of the commissioner, exceed five per
20 cent of the depository financial services loan company's capital
21 and surplus. In no case shall the aggregate amount invested by
22 a depository financial services loan company under this

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1 subsection exceed ten per cent of the depository financial
2 services loan company's capital and surplus."

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

5 "**§412:11-103 Use of state or federal examinations.** The
6 commissioner may accept, adopt, or use in lieu of an examination
7 prescribed by section 412:11-102 or otherwise, all or any part
8 of the results of an examination conducted by an appropriate
9 state or federal regulatory agency of a financial institution or
10 a financial institution holding company for the same period or
11 subject matter that would be covered by an examination required
12 or permitted under this article."

13 SECTION 44. Section 412:3-103, Hawaii Revised Statutes, is
14 repealed.

15 [~~"§412:3-103 Amendments to articles and bylaws. Upon the~~
16 ~~adoption of any amendment to the articles of incorporation or~~
17 ~~association or to the bylaws of a Hawaii financial institution,~~
18 ~~the secretary or other authorized officer of the financial~~
19 ~~institution shall file a copy of the amendment to the articles~~
20 ~~or bylaws with the commissioner, certifying that the copy is~~
21 ~~true and correct, the date the amendment was adopted, and that~~
22 ~~the amendment was duly adopted in accordance with the applicable~~

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1 ~~provisions of the articles and bylaws. The articles and bylaws~~
2 ~~and any amendments thereof shall be kept on file by the~~
3 ~~division."]~~

4 SECTION 45. Section 412:3-113, Hawaii Revised Statutes, is
5 repealed.

6 [~~§412:3-113 Availability of statement of assets and~~
7 ~~liabilities. Unless extended by the commissioner, within ten~~
8 ~~days after submission to the commissioner of its June 30 and~~
9 ~~December 31 financial statements, every Hawaii financial~~
10 ~~institution, except a nondepository financial services loan~~
11 ~~company or credit union, shall file with the commissioner its~~
12 ~~statement of assets and liabilities which can readily be~~
13 ~~provided to the public. The statement shall be in a form~~
14 ~~prescribed by the commissioner and shall be prepared in~~
15 ~~accordance with section 412:3-108. The statement of assets and~~
16 ~~liabilities shall be made available to the public by the~~
17 ~~institution until the subsequent statement becomes available."]~~

18 SECTION 46. Section 412:3-115, Hawaii Revised Statutes, is
19 repealed.

20 [~~§412:3-115 Access to safety deposit box. Unless~~
21 ~~otherwise provided for in the lease for a safety deposit box,~~
22 ~~access to the safety deposit box leased or rented to one or more~~

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1 ~~persons may be permitted by a financial institution to any~~
2 ~~person leasing or renting the safety deposit box, including any~~
3 ~~person purporting to be the personal representative, authorized~~
4 ~~agent, guardian, trustee or other fiduciary for the lessee or~~
5 ~~renter of the safety deposit box. The provisions of this~~
6 ~~section shall be applicable even though the name of the person~~
7 ~~appearing on the financial institution's records as the lessee~~
8 ~~or renter is modified by a qualifying or descriptive term such~~
9 ~~as agent or trustee or other word or phrase indicating that the~~
10 ~~person may not be the lessee or renter of the safety deposit box~~
11 ~~in their own right. No financial institution shall be liable~~
12 ~~for any damages or penalty for allowing or refusing access to or~~
13 ~~removal of the contents of the safety deposit box under the~~
14 ~~provisions of this section."]~~

15 SECTION 47. Section 412:3-208, Hawaii Revised Statutes, is
16 repealed.

17 [~~§412:3-208 Approval of articles and bylaws.~~ (a) ~~Within~~
18 ~~sixty days after receiving preliminary approval to organize, the~~
19 ~~applicant in organization shall file with the commissioner the~~
20 ~~proposed articles of incorporation and bylaws of the Hawaii~~
21 ~~financial institution. Within sixty days thereafter, the~~

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1 ~~commissioner shall deny, approve or issue a statement of no~~
2 ~~objection to the articles and bylaws.~~

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

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

10 ~~(d) Although the proposed financial institution may have~~
11 ~~corporate existence, it may not transact any financial~~
12 ~~institution business until it has received a financial~~
13 ~~institution charter or license under this article, provided that~~
14 ~~the financial institution may conduct any transaction that is~~
15 ~~incidental and necessary to prepare to do a financial~~
16 ~~institution business and obtain a charter or license."]~~

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

19 [~~§412:3-210 Approval of capital stock solicitation.~~ (a)
20 ~~The applicant in organization and the proposed Hawaii financial~~
21 ~~institution shall not solicit subscriptions for the capital~~

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1 ~~stock of the Hawaii financial institution without written~~
2 ~~approval of the commissioner.~~

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

14 ~~(1) Information regarding the solicitation plan by which~~
15 ~~the applicant in organization and the proposed~~
16 ~~financial institution proposes to conduct the~~
17 ~~solicitation of subscribers;~~

18 ~~(2) Information regarding the classes of shares,~~
19 ~~respective quantities of shares for each class, and~~
20 ~~the subscription price of each class of stock;~~

21 ~~(3) A specimen subscription contract or purchase~~
22 ~~agreement, suitability certificates and other related~~

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- 1 ~~documents to be executed by subscribers;~~
- 2 ~~(4) Any underwriting agreement or other agreement for the~~
3 ~~purchase or distribution of the capital stock;~~
- 4 ~~(5) Any escrow agreements or other agreement for the~~
5 ~~holding of the purchase proceeds of the capital stock;~~
- 6 ~~(6) Proposed advertising materials;~~
- 7 ~~(7) If the offer and sale of the capital stock is subject~~
8 ~~to the Securities Act of 1933 and regulations~~
9 ~~thereunder, a copy of the registration statement most~~
10 ~~recently filed with the federal Securities and~~
11 ~~Exchange Commission or any other notices or other~~
12 ~~filings in lieu of registration required or permitted~~
13 ~~by that Act or regulation and any subsequent~~
14 ~~amendments thereto;~~
- 15 ~~(8) If the offer and sale of the capital stock is subject~~
16 ~~to chapter 485, a copy of the registration or~~
17 ~~qualification statement most recently filed with the~~
18 ~~commissioner of securities and any subsequent~~
19 ~~amendments thereto;~~
- 20 ~~(9) If the offer and sale of the capital stock is not~~
21 ~~subject to the Securities Act of 1933 or chapter 485,~~
22 ~~whether exempted by law or regulation or otherwise, a~~

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1 ~~copy of the most recent version of any prospectus,~~
2 ~~offering memorandum, offering circular, or other~~
3 ~~offering document proposed to be delivered to~~
4 ~~prospective subscribers to the capital stock, and any~~
5 ~~subsequent amendments thereto, and~~

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

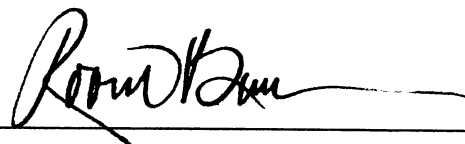
8 ~~(c) Upon being satisfied that the application for approval~~
9 ~~of the capital stock solicitation is complete and that the~~
10 ~~solicitation will not affect the safety or soundness of the~~
11 ~~proposed financial institution or harm the public interest, the~~
12 ~~commissioner shall approve the application. The approval shall~~
13 ~~not constitute a determination that the applicant has complied~~
14 ~~with chapter 485 or any other state or federal law."]~~

15 SECTION 49. Chapter 412, article 7, part IV, Hawaii
16 Revised Statutes, is repealed.

17 SECTION 50. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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

20
21 INTRODUCED BY: _____



22 BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2278

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

PURPOSE: The purpose of this bill is to amend and update, in a comprehensive manner, chapter 412, Hawaii Revised Statutes (HRS), with the goal of reducing regulatory burden by eliminating obsolete requirements and improving the procedures for the licensing and regulation of financial institutions in Hawaii by the Division of Financial Institutions (DFI).

MEANS: Add one new section to chapter 412, HRS; amend sections 412:1-104, 412:1-109, 412:2-104(a) and (b), 412:2-109(g), 412:2-306(a) and (b), 412:2-307(a), 412:2-308(a), 412:2-310, 412:3-101, 412:3-102, 412:3-111(g), 412:3-114, 412:3-201, 412:3-202, 412:3-203, 412:3-204, 412:3-206, 412:3-211(a), 412:3-212, 412:3-506, 412:3-508, 412:3-604(a), 412:3-605, 412:3-608, 412:3-609(e) through (j), 412:3-610(d), 412:3-611(a), 412:3-612(e), 412:5-203, 412:5-305(h), 412:5-402(a), 412:6-203, 412:6-204, 412:6-306(h), 412:7-100, 412:7-203, 412:7-204, 412:7-306(h), 412:8-201, 412:9-403, 412:9-409(i), and 412:11-103; and repeal sections 412:3-103, 412:3-113, 412:3-115, 412:3-208, and 412:3-210, and part IV (sections 412:7-400 through 412:7-408) of article 7 of chapter 412, HRS.

JUSTIFICATION: This bill is the result of a comprehensive review of the entire chapter, which has been amended piecemeal over the years, but has not been completely reviewed since enactment in 1993. The Code of Financial Institutions is revised to: (1) reduce regulatory burden; (2) update it to recognize changes in the industry; (3) provide for more flexibility in supervising and regulating

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the industry; and (4) ensure adequate protection for the consumer.

Reduce Regulatory Burden

Hawaii financial institutions have a duty to report illegal acts that involve a sum in excess of \$10,000. An amendment increases the sum to in excess of \$100,000.

Notification to the commissioner of opening, relocating, and closing automatic teller machines is eliminated.

Eliminating the requirement in section 412:3-113, HRS, for Hawaii depository financial institutions to file a statement of assets and liabilities semi-annually with the commissioner of financial institutions reduces an unwarranted regulatory burden on financial institutions. The filing was intended to make certain information available to the public; however, such information is now readily available to the public from other sources, including the financial institutions themselves and federal regulatory agency web sites. The existing filing requirement is therefore no longer needed.

Copies of amendments to articles and bylaws need not be filed with the commissioner. Approval of articles and bylaws and capital stock solicitation by the commissioner is also eliminated further reducing regulatory burden.

Provisions related to access to safety deposit boxes are eliminated as unnecessary regulation.

Update and Recognize Changes in Industry

Certain records, including amendments to articles of incorporation or association and the bylaws of a Hawaii financial

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institution, must be kept in accordance with the rules of the commissioner promulgated under chapter 91, HRS.

References to mutual savings and loan associations or mutual associations in articles 1, 3, and 7 are eliminated as such associations no longer exist.

This bill adds conservatorships as representative capacities to which a converting or participating institution may be named and gives a trust company the power and authority to serve as a conservator in a conservatorship.

This bill expands the permitted investments that banks, savings banks, savings and loan associations, and depository financial services loan companies can make of their own assets to include limited liability partnerships, companies or corporations.

Provide Flexible Regulation

Giving the commissioner authority to waive, on a year-to-year discretionary basis, the fees assessed annually to Hawaii financial institutions under section 412:2-109, HRS, is consistent with the commissioner's present authority to waive, on a year-to-year basis, examination related fees and charges for Hawaii financial institutions. The proposed amendment allows the division of financial institutions more flexibility to align revenues with expenses from year to year, without imposing assessments that the division might not require as a source of operating funds in a particular fiscal year.

Amendments related to applications for approval to organize a financial institution make the Hawaii process more consistent with the approval procedures of the Federal Depository Insurance Commission resulting in greater efficiency for both agencies.

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In lieu of an examination prescribed by the chapter, the commissioner is allowed to use the results of a state examination, as well as of a federal examination.

Protection for Consumers

A new section allows the commissioner to request information at any time for good cause from any institution regulated by the division.

Financial institutions will be required to provide written notice to and obtain approval from the commissioner to use a particular name.

The section on confidentiality of records is amended to apply to attorneys and ensure that certain information is protected from subpoena or other legal process under this proposal.

The commissioner may order the removal from office or employment of an institution-affiliated party and prohibition or participation in the affairs of the financial institution or any other Hawaii financial institution.

Notification and other information will be required to be given to the commissioner when closing an operating subsidiary or service corporation to ensure proper disposal of assets and liabilities.

Impact on the public: The proposed amendments benefit the general public by insuring that Hawaii's financial institutions will remain current with industry trends in safe and sound operation. Additionally, reductions in regulatory burden will serve to contain financial institution operating costs which will also arguably benefit consumers.

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Impact on the department and other agencies:

Reductions in financial institutions regulatory burden will also reduce associated tasks within DFI and their attendant costs. Those changes associated with industry changes will insure that Hawaii's financial institutions will remain current with financial service trends and maintain safe and sound operations.

The discretion to waive certain fees on an annual basis will not adversely impact the department since a waiver will only be granted when other revenue sources are sufficient to cover the division's operating expenses for the fiscal year in question.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2007.