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# A BILL FOR AN ACT

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

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

- 1           SECTION 1. Section 412:3-201, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:
- 3           "(b) The application shall contain the following  
4 information, unless waived by the commissioner:
- 5           (1) The proposed name of the financial institution;
- 6           (2) The specific location of its principal office,  
7 branches, agencies, and support facilities, and any  
8 lease agreements for such principal office, branches,  
9 agencies, and support facilities;
- 10          (3) Financial statements, employment history, education,  
11 management experience, and other biographical  
12 information for all applicants, organizers, proposed  
13 executive officers, and directors of the financial  
14 institution;
- 15          (4) The name and address of each proposed subscriber of  
16 capital stock in the financial institution;
- 17          (5) The proposed capital plan, if capital has not been  
18 fully raised, that shall include:



- 1 (A) A description of any stock options, debentures,  
2 and stock warrants offered or proposed to be  
3 offered to any person; and
- 4 (B) Any stock option plan;
- 5 (6) The proposed capital stock solicitation plan, if  
6 subscriptions for capital stock will be solicited,  
7 that shall include:
- 8 (A) Information regarding the solicitation plan by  
9 which the applicant and the proposed financial  
10 institution propose to conduct the solicitation  
11 of subscribers;
- 12 (B) Information regarding the classes of shares,  
13 respective quantities of shares for each class,  
14 and the subscription price of each class of  
15 stock;
- 16 (C) A specimen subscription contract or purchase  
17 agreement and other related documents to be  
18 executed by subscribers;
- 19 (D) Any underwriting agreement or other agreement for  
20 the purchase or distribution of the capital  
21 stock;



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



1           any prospectus, offering memorandum, offering  
2           circular, or other offering document proposed to  
3           be delivered to prospective subscribers to the  
4           capital stock, and any subsequent amendments  
5           thereto;

6           (7) The financial institution's proposed policies  
7           concerning loans and concentrations of credit, asset  
8           and liability management, conflicts of interest,  
9           investments, community reinvestment, bank secrecy,  
10          anti-money laundering, and customer identification;

11          (8) The financial institution's business plan for the  
12          first three years of operations;

13          (9) Financial projections regarding the financial  
14          institution's profitability for the first three years  
15          of operations;

16          (10) A market study or letters of support evidencing the  
17          need and advisability of granting authority to  
18          organize a financial institution;

19          (11) Except for trust companies, evidence that the  
20          financial institution has applied for federal deposit  
21          insurance from the Federal Deposit Insurance



- 1 Corporation or other appropriate federal deposit  
2 insurer;
- 3 (12) Evidence that the financial institution has applied  
4 for fidelity bonds and other insurance appropriate to  
5 its size and operations, including the types and the  
6 amounts of coverage, and the respective deductible  
7 amounts, from insurance companies licensed in the  
8 United States;
- 9 (13) Evidence that the proposed directors and executive  
10 officers of the financial institution have the  
11 financial ability, responsibility, and experience to  
12 engage in the business of a financial institution;
- 13 (14) The employment agreements for all proposed executive  
14 officers of the financial institution;
- 15 (15) The proposed articles of incorporation and bylaws of  
16 the financial institution;
- 17 (16) A description of any existing or proposed service  
18 corporation, affiliate, or subsidiary; [~~and~~]
- 19 (17) Information for each of the proposed directors and  
20 executive officers of the financial institution,  
21 accompanied by the appropriate payment of the  
22 applicable fee for each criminal history record check



1           to be conducted in accordance with section 846-2.7;

2           and

3       ~~[(17)]~~ (18) Any other information that the commissioner may  
4           require."

5           SECTION 2. Section 412:3-301, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

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

9           (1) The proposed name of the nondepository financial  
10           services loan company, the location of its principal  
11           office, and any lease agreements for such principal  
12           office;

13           (2) Any intended or existing affiliates, subsidiaries, and  
14           holding company of the proposed nondepository  
15           financial services loan company and the extent and  
16           nature of the holding company's control over the  
17           operations of the proposed nondepository financial  
18           services loan company;

19           (3) A business plan which shall contain the following:

20           (A) A written description of the company's proposed  
21           financial products;



- 1 (B) A written statement which explains how the scope
- 2 of the proposed business complies with article 9
- 3 and why any existing lines of business do not
- 4 conflict with the provisions of article 9;
- 5 (C) A written description of the company's proposed
- 6 plan of marketing its products, whether through
- 7 affiliates, subsidiaries, service corporations,
- 8 or holding company;
- 9 (D) Financial projections regarding the nondepository
- 10 financial services loan company's profitability;
- 11 and
- 12 (E) Any and all contractual arrangements which are
- 13 intended to be executed between the nondepository
- 14 financial services loan company and its holding
- 15 company, affiliates, and subsidiaries;
- 16 (4) Financial statements, employment history, education,
- 17 management experience, and other biographical
- 18 information for the proposed executive officers and
- 19 directors of the nondepository financial services loan
- 20 company and its holding company, if any;



- 1 (5) Proposed policies regarding loans, investments,
- 2 operations, accounting, recordkeeping, and compliance
- 3 with applicable federal and state consumer laws;
- 4 (6) The name and address of each proposed subscriber of
- 5 capital stock in the nondepository financial services
- 6 loan company or the majority shareholders in any
- 7 holding company;
- 8 (7) A copy of the nondepository financial services loan
- 9 company's articles of incorporation and bylaws; [~~and~~]
- 10 (8) Information for each of the proposed directors and
- 11 executive officers of the nondepository financial
- 12 services loan company, accompanied by the appropriate
- 13 payment of the applicable fee for each criminal
- 14 history record check to be conducted in accordance
- 15 with section 846-2.7; and
- 16 [~~+8~~] (9) Any other information that the commissioner may
- 17 require."

18 SECTION 3. Section 412:2-306, Hawaii Revised Statutes, is  
 19 amended by amending its title to read as follows:

20 "**§412:2-306 Removal or prohibition of institution-affiliated**  
 21 **party~~-~~; grounds.**"



1 SECTION 4. Section 412:8-103, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§412:8-103 Authority to serve as trustee.** Unless  
4 chartered as a trust company under this chapter or otherwise  
5 specifically authorized by the laws of this State, no person[  
6 ~~except an individual acting as a co-trustee,~~] shall hold itself  
7 out to the general public as being available to serve as a  
8 trustee or trust company, whether or not for compensation. No  
9 person shall use the term "trust company" as part of its name  
10 unless chartered as a trust company pursuant to this chapter."

11 SECTION 5. Section 412:10-103, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

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

- 15 (1) The proposed name of the credit union;
- 16 (2) Proposed lease agreements for its principal office;
- 17 (3) The territory in which the proposed credit union will  
18 operate;
- 19 (4) A business plan;
- 20 (5) Employment history, education, management experience,  
21 and other biographical information for all original



1 chartering applicants, and proposed executive officers  
2 of the credit union;

3 (6) Proposed policies regarding loans, investments,  
4 operations, accounting, recordkeeping, and applicable  
5 federal and state consumer laws; ~~and~~

6 (7) Information for each of the original chartering  
7 applicants and proposed executive officers of the  
8 credit union, accompanied by the appropriate payment  
9 of the applicable fee for each criminal history record  
10 check to be conducted in accordance with section 846-  
11 2.7; and

12 ~~(7)~~ (8) Any other information that the commissioner may  
13 require."

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

16 "**§412:11-102 Examination of financial institution holding**  
17 **company.** The commissioner may from time to time conduct such  
18 reasonable examinations of any financial institution holding  
19 company as may be necessary or appropriate to determine whether  
20 the condition or activities of the company are jeopardizing the  
21 safety or soundness of the operations of its financial  
22 institution subsidiary. ~~[The commissioner shall not conduct~~



1 ~~such examinations of holding companies unless the commissioner~~  
 2 ~~has good cause to believe that a holding company is experiencing~~  
 3 ~~financial adversity which will have a material negative impact~~  
 4 ~~on the safety and soundness of its financial institution~~  
 5 ~~subsidiary.]~~ The cost of such examinations shall be assessed  
 6 against and paid by the financial institution holding company in  
 7 the same manner as financial institutions under section 412:2-  
 8 105."

9 SECTION 7. Section 412:13-222, Hawaii Revised Statutes, is  
 10 amended by amending subsection (a) to read as follows:

11 "(a) No foreign bank that is licensed to establish and  
 12 maintain a Hawaii state branch, Hawaii state agency, or Hawaii  
 13 representative office shall relocate any Hawaii office without  
 14 the commissioner's prior written approval[-]; provided that  
 15 approval shall not be required if:

- 16 (1) The relocation will be less than one mile from the  
 17 foreign bank's present place of business;
- 18 (2) The foreign bank gives the commissioner written notice  
 19 at least twenty days prior to the move;
- 20 (3) The type of business carried on at the new place of  
 21 business will be the same as at the present place of  
 22 business; and



1       (4) There will be no financial involvement in the  
2       relocation by a director, executive officer, or  
3       principal shareholder, or a related interest of any of  
4       these persons."

5       SECTION 8. Section 846-2.7, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7       "(b) Criminal history record checks may be conducted by:

8       (1) The department of health on operators of adult foster  
9       homes or developmental disabilities domiciliary homes  
10       and their employees, as provided by section 333F-22;

11       (2) The department of health on prospective employees,  
12       persons seeking to serve as providers, or  
13       subcontractors in positions that place them in direct  
14       contact with clients when providing non-witnessed  
15       direct mental health services as provided by section  
16       321-171.5;

17       (3) The department of health on all applicants for  
18       licensure for, operators for, and prospective  
19       employees, and volunteers at one or more of the  
20       following: skilled nursing facility, intermediate  
21       care facility, adult residential care home, expanded  
22       adult residential care homes, assisted living



1 facility, home health agency, hospice, adult day  
 2 health center, special treatment facility, therapeutic  
 3 living program, intermediate care facility for the  
 4 mentally retarded, hospital, rural health center and  
 5 rehabilitation agency, and, in the case of any of the  
 6 above-related facilities operating in a private  
 7 residence, on any adult living in the facility other  
 8 than the client as provided by section 321-15.2;

9 (4) The department of education on employees, prospective  
 10 employees, and teacher trainees in any public school  
 11 in positions that necessitate close proximity to  
 12 children as provided by section 302A-601.5;

13 (5) The counties on employees and prospective employees  
 14 who may be in positions that place them in close  
 15 proximity to children in recreation or child care  
 16 programs and services;

17 (6) The county liquor commissions on applicants for liquor  
 18 licenses as provided by section 281-53.5;

19 (7) The department of human services on operators and  
 20 employees of child caring institutions, child placing  
 21 organizations, and foster boarding homes as provided  
 22 by section 346-17;



- 1           (8) The department of human services on prospective  
2           adoptive parents as established under section 346-  
3           19.7;
- 4           (9) The department of human services on applicants to  
5           operate child care facilities, prospective employees  
6           of the applicant, and new employees of the provider  
7           after registration or licensure as provided by section  
8           346-154;
- 9           (10) The department of human services on persons exempt  
10          pursuant to section 346-152 to be eligible to provide  
11          child care and receive child care subsidies as  
12          provided by section 346-152.5;
- 13          (11) The department of human services on operators and  
14          employees of home and community-based case management  
15          agencies and operators and other adults, except for  
16          adults in care, residing in foster family homes as  
17          provided by section 346-335;
- 18          (12) The department of human services on staff members of  
19          the Hawaii youth correctional facility as provided by  
20          section 352-5.5;
- 21          (13) The department of human services on employees,  
22          prospective employees, and volunteers of contracted



1 providers and subcontractors in positions that place  
2 them in close proximity to youth when providing  
3 services on behalf of the office or the Hawaii youth  
4 correctional facility as provided by section 352D-4.3;  
5 (14) The judiciary on employees and applicants at detention  
6 and shelter facilities as provided by section 571-34;  
7 (15) The department of public safety on employees and  
8 prospective employees who are directly involved with  
9 the treatment and care of persons committed to a  
10 correctional facility or who possess police powers,  
11 including the power of arrest as provided by section  
12 353C-5;  
13 (16) The department of commerce and consumer affairs on  
14 applicants for private detective or private guard  
15 licensure as provided by section 463-9;  
16 (17) Private schools and designated organizations on  
17 employees and prospective employees who may be in  
18 positions that necessitate close proximity to  
19 children; provided that private schools and designated  
20 organizations receive only indications of the states  
21 from which the national criminal history record



- 1 information was provided as provided by section 302C-  
2 1;
- 3 (18) The public library system on employees and prospective  
4 employees whose positions place them in close  
5 proximity to children as provided by section 302A-  
6 601.5;
- 7 (19) The State or any of its branches, political  
8 subdivisions, or agencies on applicants and employees  
9 holding a position that has the same type of contact  
10 with children, dependent adults, or persons committed  
11 to a correctional facility as other public employees  
12 who hold positions that are authorized by law to  
13 require criminal history record checks as a condition  
14 of employment as provided by section 78-2.7;
- 15 (20) The department of human services on licensed adult day  
16 care center operators, employees, new employees,  
17 subcontracted service providers and their employees,  
18 and adult volunteers as provided by section 346-97;
- 19 (21) The department of human services on purchase of  
20 service contracted and subcontracted service providers  
21 and their employees serving clients of the adult and





1 community care services branch, as provided by section  
2 346-97;

3 (22) The department of human services on foster grandparent  
4 program, senior companion program, and respite  
5 companion program participants as provided by section  
6 346-97;

7 (23) The department of human services on contracted and  
8 subcontracted service providers and their current and  
9 prospective employees that provide home and community-  
10 based services under Section 1915(c) of the Social  
11 Security Act (42 U.S.C. §1396n(c)), as provided by  
12 section 346-97; [~~and~~]

13 (24) The department of commerce and consumer affairs on  
14 proposed directors and executive officers of a bank,  
15 savings bank, savings and loan association, trust  
16 company, and depository financial services loan  
17 company as provided by section 412:3-201;

18 (25) The department of commerce and consumer affairs on  
19 proposed directors and executive officers of a  
20 nondepository financial services loan company as  
21 provided by section 412:3-301;

1        (26) The department of commerce and consumer affairs on the  
2        original chartering applicants and proposed executive  
3        officers of a credit union as provided by section  
4        412:10-103; and

5        [~~24~~] (27) Any other organization, entity, or the State,  
6        its branches, political subdivisions, or agencies as  
7        may be authorized by state law."

8        SECTION 9. Statutory material to be repealed is bracketed  
9        and stricken. New statutory material is underscored.

10       SECTION 10. This Act shall take effect upon its approval.



**Report Title:**

Financial institutions

**Description:**

Eliminates obsolete requirements and improves procedures for the licensing and regulation of financial institutions. (HB1313 HD1)

