

# H.B. NO. 3086

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## A BILL FOR AN ACT

RELATING TO THE CODE OF FINANCIAL INSTITUTIONS.

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

1 SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended  
2 by adding a new section to Article 9, Part I to be appropriately  
3 designated and to read as follows:

4 "**§412:9- Display of license.** Every holder of a  
5 financial services loan company license shall display it in a  
6 conspicuous place in the licensee's principal place of business  
7 and in each of its branches."

8 SECTION 2. Section 412:2-306, Hawaii Revised Statutes, is  
9 amended by amending the title to read as follows:

10 "**§412:2-306 Removal or prohibition of institution-**  
11 **affiliated party[-]; grounds.**"

12 SECTION 3. Section 412:3-201, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

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

16 (1) The proposed name of the financial institution;

- 1           (2) The specific location of its principal office,  
2           branches, agencies, and support facilities, and any  
3           lease agreements for such principal office, branches,  
4           agencies, and support facilities;
- 5           (3) Financial statements, employment history, education,  
6           management experience, and other biographical  
7           information for all applicants, organizers, proposed  
8           executive officers, and directors of the financial  
9           institution;
- 10          (4) The name and address of each proposed subscriber of  
11          capital stock in the financial institution;
- 12          (5) The proposed capital plan, if capital has not been  
13          fully raised, that shall include:
- 14                (A) A description of any stock options, debentures,  
15                and stock warrants offered or proposed to be  
16                offered to any person; and
- 17                (B) Any stock option plan;
- 18          (6) The proposed capital stock solicitation plan, if  
19          subscriptions for capital stock will be solicited,  
20          that shall include:
- 21                (A) Information regarding the solicitation plan by  
22                which the applicant and the proposed financial

1 institution propose to conduct the solicitation  
2 of subscribers;

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

7 (C) A specimen subscription contract or purchase  
8 agreement and other related documents to be  
9 executed by subscribers;

10 (D) Any underwriting agreement or other agreement for  
11 the purchase or distribution of the capital  
12 stock;

13 (E) Any escrow agreements or other agreement for the  
14 holding of the purchase proceeds of the capital  
15 stock;

16 (F) Proposed advertising materials;

17 (G) If the offer and sale of the capital stock is  
18 subject to the Securities Act of 1933 and  
19 regulations thereunder, a copy of the  
20 registration statement most recently filed with  
21 the federal Securities and Exchange Commission or  
22 any other notices or other filings in lieu of

1 registration required or permitted by that Act or  
2 regulation and any subsequent amendments thereto;

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

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

18 (7) The financial institution's proposed policies  
19 concerning loans and concentrations of credit, asset  
20 and liability management, conflicts of interest,  
21 investments, community reinvestment, bank secrecy,  
22 anti-money laundering, and customer identification;

- 1           (8) The financial institution's business plan for the  
2           first three years of operations;
- 3           (9) Financial projections regarding the financial  
4           institution's profitability for the first three years  
5           of operations;
- 6           (10) A market study or letters of support evidencing the  
7           need and advisability of granting authority to  
8           organize a financial institution;
- 9           (11) Except for trust companies, evidence that the  
10          financial institution has applied for federal deposit  
11          insurance from the Federal Deposit Insurance  
12          Corporation or other appropriate federal deposit  
13          insurer;
- 14          (12) Evidence that the financial institution has applied  
15          for fidelity bonds and other insurance appropriate to  
16          its size and operations, including the types and the  
17          amounts of coverage, and the respective deductible  
18          amounts, from insurance companies licensed in the  
19          United States;
- 20          (13) Evidence that the proposed directors and executive  
21          officers of the financial institution have the

1 financial ability, responsibility, and experience to  
2 engage in the business of a financial institution;

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

5 (15) The proposed articles of incorporation and bylaws of  
6 the financial institution;

7 (16) A description of any existing or proposed service  
8 corporation, affiliate, or subsidiary; ~~and~~

9 (17) Information necessary to conduct a criminal history  
10 record check in accordance with section 846-2.7 about  
11 each of the proposed directors and executive officers  
12 of the financial institution, accompanied by payment  
13 of the applicable fee for each record check to be  
14 conducted; and

15 ~~[(17)]~~ (18) Any other information that the commissioner may  
16 require."

17 SECTION 4. Section 412:3-301, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

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

21 (1) The proposed name of the nondepository financial  
22 services loan company, the location of its principal

- 1 office, and any lease agreements for [~~such~~] the  
2 principal office;
- 3 (2) Any intended or existing affiliates, subsidiaries, and  
4 holding company of the proposed nondepository  
5 financial services loan company and the extent and  
6 nature of the holding company's control over the  
7 operations of the proposed nondepository financial  
8 services loan company;
- 9 (3) A business plan which shall contain the following:
- 10 (A) A written description of the company's proposed  
11 financial products;
- 12 (B) A written statement which explains how the scope  
13 of the proposed business complies with article 9  
14 and why any existing lines of business do not  
15 conflict with [~~the provisions of~~] article 9;
- 16 (C) A written description of the company's proposed  
17 plan of marketing its products, whether through  
18 affiliates, subsidiaries, service corporations,  
19 or holding company;
- 20 (D) Financial projections regarding the nondepository  
21 financial services loan company's profitability;  
22 and

- 1 (E) Any and all contractual arrangements which are  
2 intended to be executed between the nondepository  
3 financial services loan company and its holding  
4 company, affiliates, and subsidiaries;
- 5 (4) Financial statements, employment history, education,  
6 management experience, and other biographical  
7 information for the proposed executive officers and  
8 directors of the nondepository financial services loan  
9 company and its holding company, if any;
- 10 (5) Proposed policies regarding loans, investments,  
11 operations, accounting, recordkeeping, and compliance  
12 with applicable federal and state consumer laws;
- 13 (6) The name and address of each proposed subscriber of  
14 capital stock in the nondepository financial services  
15 loan company or the majority shareholders in any  
16 holding company;
- 17 (7) A copy of the nondepository financial services loan  
18 company's articles of incorporation and bylaws; [~~and~~]
- 19 (8) Information necessary to conduct a criminal history  
20 record check in accordance with section 846-2.7 about  
21 each of the proposed directors and executive officers  
22 of the nondepository financial services loan company,



1 accompanied by payment of the applicable fee for each  
 2 record check to be conducted; and  
 3 ~~[(8)]~~ (9) Any other information that the commissioner may  
 4 require."

5 SECTION 5. Section 412:3-507, Hawaii Revised Statutes, is  
 6 amended to read as follows:

7 "**§412:3-507 Closing branch or agency[-]; temporary**  
 8 **closures.** (a) A Hawaii financial institution shall give the  
 9 commissioner prior notice of its intent to close any branch or  
 10 agency at least thirty days prior to the closing. The notice  
 11 shall specify the intended date of closing, the reasons for the  
 12 closing, and a certification by the secretary or other  
 13 authorized officer of the institution that the decision to close  
 14 was duly approved by its board of directors. This notice may be  
 15 satisfied by delivery to the commissioner of a copy of any  
 16 notice pertaining to the closure given to the financial  
 17 institution's appropriate federal regulatory agency.

18 (b) A Hawaii financial institution may temporarily close a  
 19 branch or agency in the event of an emergency for a period of  
 20 time up to 180 days, or a longer time period as determined  
 21 necessary by the commissioner. For purposes of this section, an  
 22 emergency means a situation of an unusual or compelling urgency

1 that creates a threat to life, public health, welfare, or safety  
2 by reason of major natural disaster, epidemic, riot, fire, or  
3 other reason as determined by the commissioner. Written notice  
4 shall be provided to the commissioner upon closure as soon as  
5 practicable and notice shall be provided to the Hawaii financial  
6 institution's customers in the form of a sign posted at the  
7 primary public entrance of the branch or agency. The written  
8 notices shall state the reasons for the closure, the expected  
9 date of reopening, and information regarding where and how  
10 customers of the closed branch or agency will be accommodated  
11 during the temporary closure. Notice of the reopening shall be  
12 provided to the commissioner within five days of the reopening."

13 SECTION 6. Section 412:8-103, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§412:8-103 Authority to serve as trustee.** Unless  
16 chartered as a trust company under this chapter or otherwise  
17 specifically authorized by the laws of this State, no person[  
18 ~~except an individual acting as a co-trustee,~~] shall hold itself  
19 out to the general public as being available to serve as a  
20 trustee or trust company, whether or not for compensation. No  
21 person shall use the term "trust company" as part of its name  
22 unless chartered as a trust company pursuant to this chapter."

1 SECTION 7. Section 412:9-304, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§412:9-304 Consumer loan charges.** Unless specifically  
4 authorized in this article or by rule adopted by the  
5 commissioner, a financial services loan company shall only have  
6 the right to charge, contract for, and receive in advance or  
7 otherwise, the following charges in addition to the interest  
8 permitted in section 412:9-302 for a consumer loan made under  
9 this article[+], including but not limited to a first-lien  
10 mortgage loan:

11 (1) Late charges under the consumer loan on any delinquent  
12 installment, or portion of the delinquent installment  
13 where there has been no extension or deferment.  
14 Delinquency occurs when the installment or payment is  
15 not paid on the due date. Late charges shall not be  
16 collected more than once for the same delinquent  
17 installment. Late charges on any consumer loan shall  
18 not exceed five per cent of the delinquent  
19 installment, and late charges shall not be assessed on  
20 any consumer loan after acceleration of the maturity  
21 of the consumer loan;

1           (2) A prepayment penalty as provided in the note or other  
2           form of contract signed by the borrower on any amount  
3           that is voluntarily prepaid; provided that:  
4           (A) The prepayment penalty on any consumer loan with  
5           a term of five years or more that is primarily  
6           secured by an interest in real property and in  
7           which the interest rate is computed under section  
8           412:9-301(2) and which is prepaid within five  
9           years of the date of the loan shall be computed  
10          on the amount prepaid in excess of twenty per  
11          cent of the original principal amount of the loan  
12          in any twelve-month period measured from the date  
13          of the loan or from any anniversary of the loan  
14          date. The prepayment penalty may be charged only  
15          on amounts in excess of the twenty per cent  
16          amount in each twelve-month period in such five-  
17          year period and shall not exceed six months of  
18          interest at the [~~maximum~~] then applicable loan  
19          interest rate [~~permissible for the consumer loan~~  
20          ~~by law~~] on the amount prepaid[+], provided that  
21          the interest rate is permissible under applicable  
22          usury law;

1 (B) The prepayment penalty shall not be charged on a  
2 consumer loan that is a variable rate or open-end  
3 loan, on a precomputed loan on which interest is  
4 computed under section 412:9-301(1), or on loans  
5 that are not secured by real estate; and

6 (C) The prepayment penalty shall not be charged on  
7 any amount that is paid because of the exercise  
8 of any acceleration provision by the financial  
9 services loan company;

10 (3) Extension or deferment charges on any payment on  
11 account of the principal balance of a loan, or a  
12 portion thereof, that is due on a particular date, but  
13 is extended or deferred to a later date by mutual  
14 agreement. The charges shall be based upon the amount  
15 so extended or deferred at interest not exceeding that  
16 permitted upon the original loan under section 412:9-  
17 302, for the actual period of the extension or  
18 deferment. The extension or deferment charges may be  
19 collected either in advance at the commencement of the  
20 period of extension or deferment or otherwise as  
21 agreed. The term and conditions of the extension or  
22 deferment, including the amount of the consumer loan

1 so extended or deferred, and the period of, and the  
2 charge for the extension or deferment shall be set  
3 forth in writing and signed by the borrower with one  
4 copy given to the borrower;

5 (4) Nonrefundable discount, points, loan fees, and loan  
6 origination charges; provided that:

7 (A) Discount, points, loan fees, and loan origination  
8 charges shall not be charged on precomputed loans  
9 on which interest is computed under section  
10 412:9-301(1); and

11 (B) The nonrefundable discount, points, loan fees,  
12 and loan origination charges shall be permitted  
13 on consumer loans on which interest is computed  
14 under section 412:9-301(2) if the consumer loan  
15 is secured by an interest in real property or if  
16 the consumer loan is made to a lessee of land  
17 subject to the Hawaiian Homes Commission Act and  
18 the loan, but for the provisions of the Act,  
19 would be secured by a mortgage on the leasehold  
20 interest. Provided further that, except for  
21 open-end loans, the nonrefundable discount,  
22 points, loan fees, and origination charges shall

1           be included as interest to determine compliance  
2           of the loan with the interest rate limits under  
3           section 412:9-302(b)(2) when the consumer loan is  
4           made.

5           The nonrefundable discount, points, loan fees, and  
6           loan origination charges shall be fully earned on the  
7           date the loan commitment agreement or other form of  
8           contract is executed and the commitment fee paid, or  
9           on the date the consumer loan is made, and shall not  
10          be subject to refund on prepayment of the consumer  
11          loan;

12          (5) Fees, charges, and expenses reasonably related to the  
13          consumer loan that are retained by the financial  
14          services loan company; provided that the fees,  
15          charges, and expenses are charged only on consumer  
16          loans that are secured by an interest in real  
17          property; and provided further that the total dollar  
18          amount of the fees, charges, and expenses, whether or  
19          not itemized, shall not exceed one per cent of the  
20          principal amount of the loan. The fees, charges, and  
21          expenses may include but are not limited to notary  
22          fees, appraisal fees, appraisal review fees, and fees

1 for the development, processing, and preparation of  
2 loan documents, including deeds, promissory notes,  
3 mortgages, and reconveyance, settlement, and similar  
4 documents;

- 5 (6) Fees, charges, and expenses reasonably related to the  
6 consumer loan that are actually paid to third parties,  
7 affiliates, or subsidiaries for services actually  
8 rendered, no portion of which is rebated, refunded, or  
9 paid directly or indirectly to the financial services  
10 loan company by the third parties, affiliates, or  
11 subsidiaries. The fees, charges, and expenses may  
12 include but are not limited to charges for credit  
13 reports, actual taxes, and fees charged by a  
14 governmental agency for recording, filing, or entering  
15 of record any security agreements or instruments,  
16 including the partial or complete release of such  
17 security agreements or instruments, insurance premiums  
18 of the kind and to the extent described in paragraph  
19 (2) of subsection (e) of Section 226.4 of Regulation Z  
20 of the Board of Governors of the Federal Reserve  
21 System and to the extent that the insurance premium  
22 does not exceed \$20, appraisal fees, appraisal review



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1 fees, title report or title insurance fees, mortgage  
2 reserve funds to be used for payment of taxes,  
3 insurance, lease rent and condominium assessments,  
4 real property tax services fees, wire transfer fees,  
5 and attorney's fees and expenses for documentation of  
6 the consumer loan or for the collection of any  
7 consumer loan in default."

8 SECTION 8. Section 412:10-103, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

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

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

1 (6) Proposed policies regarding loans, investments,  
2 operations, accounting, recordkeeping, and applicable  
3 federal and state consumer laws; [and]

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

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

12 SECTION 9. Section 412:11-102, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§412:11-102 Examination of financial institution holding**

15 **company.** The commissioner may from time to time conduct such  
16 reasonable examinations of any financial institution holding  
17 company as may be necessary or appropriate to determine whether  
18 the condition or activities of the company are jeopardizing the  
19 safety or soundness of the operations of its financial  
20 institution subsidiary. [~~The commissioner shall not conduct~~  
21 ~~such examinations of holding companies unless the commissioner~~  
22 ~~has good cause to believe that a holding company is experiencing~~

1 ~~financial adversity which will have a material negative impact~~  
2 ~~on the safety and soundness of its financial institution~~  
3 ~~subsidiary.]~~ The cost of such examinations shall be assessed  
4 against and paid by the financial institution holding company in  
5 the same manner as financial institutions under section 412:2-  
6 105."

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

9 "(a) No foreign bank that is licensed to establish and  
10 maintain a Hawaii state branch, Hawaii state agency, or Hawaii  
11 representative office shall relocate any Hawaii office without  
12 the commissioner's prior written approval[-]; provided that  
13 approval shall not be required if the relocation will be less  
14 than one mile from the foreign bank's present place of business,  
15 the foreign bank gives the commissioner written notice at least  
16 twenty days prior to the move, the type of business carried on  
17 at the new place of business will be the same as at the present  
18 place of business, and there will be no financial involvement in  
19 the relocation by a director, executive officer, or principal  
20 shareholder, or a related interest of any of these persons."

21 SECTION 11. Section 846-2.7, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:

- 1           " (b) Criminal history record checks may be conducted by:
- 2           (1) The department of health on operators of adult foster
- 3           homes or developmental disabilities domiciliary homes
- 4           and their employees, as provided by section 333F-22;
- 5           (2) The department of health on prospective employees,
- 6           persons seeking to serve as providers, or
- 7           subcontractors in positions that place them in direct
- 8           contact with clients when providing non-witnessed
- 9           direct mental health services as provided by section
- 10          321-171.5;
- 11          (3) The department of health on all applicants for
- 12          licensure for, operators for, and prospective
- 13          employees, and volunteers at one or more of the
- 14          following: skilled nursing facility, intermediate
- 15          care facility, adult residential care home, expanded
- 16          adult residential care homes, assisted living
- 17          facility, home health agency, hospice, adult day
- 18          health center, special treatment facility, therapeutic
- 19          living program, intermediate care facility for the
- 20          mentally retarded, hospital, rural health center and
- 21          rehabilitation agency, and, in the case of any of the
- 22          above-related facilities operating in a private

- 1 residence, on any adult living in the facility other  
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective  
4 employees, and teacher trainees in any public school  
5 in positions that necessitate close proximity to  
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees  
8 who may be in positions that place them in close  
9 proximity to children in recreation or child care  
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor  
12 licenses as provided by section 281-53.5;
- 13 (7) The department of human services on operators and  
14 employees of child caring institutions, child placing  
15 organizations, and foster boarding homes as provided  
16 by section 346-17;
- 17 (8) The department of human services on prospective  
18 adoptive parents as established under section 346-  
19 19.7;
- 20 (9) The department of human services on applicants to  
21 operate child care facilities, prospective employees  
22 of the applicant, and new employees of the provider

1 after registration or licensure as provided by section  
2 346-154;

3 (10) The department of human services on persons exempt  
4 pursuant to section 346-152 to be eligible to provide  
5 child care and receive child care subsidies as  
6 provided by section 346-152.5;

7 (11) The department of human services on operators and  
8 employees of home and community-based case management  
9 agencies and operators and other adults, except for  
10 adults in care, residing in foster family homes as  
11 provided by section 346-335;

12 (12) The department of human services on staff members of  
13 the Hawaii youth correctional facility as provided by  
14 section 352-5.5;

15 (13) The department of human services on employees,  
16 prospective employees, and volunteers of contracted  
17 providers and subcontractors in positions that place  
18 them in close proximity to youth when providing  
19 services on behalf of the office or the Hawaii youth  
20 correctional facility as provided by section 352D-4.3;

21 (14) The judiciary on employees and applicants at detention  
22 and shelter facilities as provided by section 571-34;

1 (15) The department of public safety on employees and  
2 prospective employees who are directly involved with  
3 the treatment and care of persons committed to a  
4 correctional facility or who possess police powers  
5 including the power of arrest as provided by section  
6 353C-5;

7 (16) The department of commerce and consumer affairs on  
8 applicants for private detective or private guard  
9 licensure as provided by section 463-9;

10 (17) Private schools and designated organizations on  
11 employees and prospective employees who may be in  
12 positions that necessitate close proximity to  
13 children; provided that private schools and designated  
14 organizations receive only indications of the states  
15 from which the national criminal history record  
16 information was provided as provided by section 302C-  
17 1;

18 (18) The public library system on employees and prospective  
19 employees whose positions place them in close  
20 proximity to children as provided by section 302A-  
21 601.5;

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



- 1           (23) The department of human services on contracted and  
2                   subcontracted service providers and their current and  
3                   prospective employees that provide home and community-  
4                   based services under Section 1915(c) of the Social  
5                   Security Act (42 U.S.C. §1396n(c)), as provided by  
6                   section 346-97; [and]
- 7           (24) The department of commerce and consumer affairs on  
8                   proposed directors and executive officers of a bank,  
9                   savings bank, savings and loan association, trust  
10                   company, and depository financial services loan  
11                   company as provided by section 412:3-201;
- 12           (25) The department of commerce and consumer affairs on  
13                   proposed directors and executive officers of a  
14                   nondepository financial services loan company as  
15                   provided by section 412:3-301;
- 16           (26) The department of commerce and consumer affairs on the  
17                   original chartering applicants and proposed executive  
18                   officers of a credit union as provided by section  
19                   412:10-103; and
- 20           ~~(24)~~ (27) Any other organization, entity, or the State,  
21                   its branches, political subdivisions, or agencies as  
22                   may be authorized by state law."

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1 SECTION 12. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect upon its approval.

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6

INTRODUCED BY:

Calvin K. Say  
BY REQUEST

JAN 22 2008

**Report Title:**

The Code of Financial Institutions

**Description:**

Updates Hawaii's Code of Financial Institutions by requiring licenses to be conspicuously displayed, addresses temporary closures during emergencies, clarifies how prepayment penalties are calculated, and allows greater access to records by State inspectors.

JUSTIFICATION SHEET

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 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 a new section to chapter 412, HRS, and amend sections 412:2-306, 412:3-201(b), 412:3-301(b), 412:3-507, 412:8-103, 412:9-304, 412:10-103(b), 412:11-102, 412:13-222(a), and 846-2.7(b), HRS.

JUSTIFICATION: A requirement to display financial services loan company licenses in a conspicuous location at each place of business is added, to bolster consumer confidence and protection.

A technical correction is made to the heading of section 412:2-306, HRS, to restore the word "grounds", which was inadvertently deleted from the heading in a prior amendment of the statute.

Application requirements for depository and nondepository Hawaii financial institutions are amended to require the information, along with the requisite fee, necessary to conduct a criminal history record check for proposed directors and executive officers of the applicant institution. This requirement is consistent with, but will not duplicate, current federal requirements for employees of depository financial institutions who routinely have access to customer funds.

Such background checks will help ensure that individuals with prior criminal convictions are not appointed or hired in key managerial positions at a newly formed Hawaii financial institution.

A provision is added to address the temporary closure of a Hawaii financial institution due to an emergency.

A provision concerning the authority of a person to serve as a trustee or trust company is clarified to focus greater emphasis on the aspect of "holding out" to the general public one's availability to serve in this fiduciary capacity.

A clarification of how prepayment penalties are to be calculated is made to close an incorrectly perceived loophole that may be exploited by some financial services loan companies.

The provision that enables DFI to examine a financial institution holding company is amended to permit such an examination without a prerequisite finding that there is cause to believe that a holding company is experiencing financial adversity. This will allow DFI to determine whether the condition or activities of a holding company may be jeopardizing the safety and soundness of the operations of its financial institution subsidiary even in instances where the holding company itself may not yet be experiencing financial adversity.

An amendment is made to place a Hawaii licensed foreign bank on equal footing with a Hawaii state-chartered financial institution with respect to relieving that foreign bank of the obligation to obtain written approval from DFI before relocating a place of business less than one mile from its existing location, provided that it gives DFI, instead, a written notification

of such relocation in the manner specified.

Section 846-2.7(b), HRS, is amended to authorize the Department of Commerce and Consumer Affairs to conduct criminal history record checks on those individuals expressly identified in sections 412:3-201(b)(17), 412:3-301(b)(8), and 412:10-103(b)(7), HRS.

Impact on the public: The proposed amendments benefit the general public by enhancing the safety and soundness of Hawaii's financial institutions and by closing a perceived loophole that may allow excessive prepayment penalties to be charged by financial services loan companies. Both domestic and foreign banks will benefit from a reduced regulatory burden.

Impact on the department and other agencies: The proposed amendments will not have a significant impact on the operations of the department or any other agencies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-104.

OTHER AFFECTED AGENCIES: Hawaii Criminal Justice Data Center.

EFFECTIVE DATE: Upon approval.