
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 article 9, part I to be
3 appropriately designated and to read as follows:

4 "§412:9- Display of license. Every financial services
5 loan company shall display a copy of its principal office
6 license in a conspicuous place at its principal office and shall
7 display a copy of a branch office license in a conspicuous place
8 at the branch office designated on the branch office license."

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

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

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

15 "§412:3-507 Closing branch or agency[-]; temporary
16 closures. (a) A Hawaii financial institution shall give the
17 commissioner prior notice of its intent to close any branch or
18 agency at least thirty days prior to the closing. The notice



1 shall specify the intended date of closing, the reasons for the
2 closing, and a certification by the secretary or other
3 authorized officer of the institution that the decision to close
4 was duly approved by its board of directors. This notice may be
5 satisfied by delivery to the commissioner of a copy of any
6 notice pertaining to the closure given to the financial
7 institution's appropriate federal regulatory agency.

8 (b) A Hawaii financial institution may temporarily close a
9 branch or agency in the event of an emergency for a period of
10 time up to one hundred eighty days, or a longer time period as
11 determined necessary by the commissioner. For purposes of this
12 section, an emergency means a situation of an unusual or
13 compelling urgency that creates a threat to life, public health,
14 welfare, or safety by reason of major natural disaster,
15 epidemic, riot, fire, or other reason as determined by the
16 commissioner. Written notice shall be provided to the
17 commissioner upon closure as soon as practicable, and notice
18 shall be provided to the Hawaii financial institution's
19 customers in the form of a sign posted at the primary public
20 entrance of the branch or agency. The written notices shall
21 state the reasons for the closure, the expected date of
22 reopening, and information regarding where and how customers of



1 the closed branch or agency will be accommodated during the
2 temporary closure. Notice of the reopening shall be provided to
3 the commissioner within five days of the reopening."

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

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

14 SECTION 5. Section 412:9-304, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§412:9-304 Consumer loan charges. Unless specifically
17 authorized in this article or by rule adopted by the
18 commissioner, a financial services loan company shall only have
19 the right to charge, contract for, and receive in advance or
20 otherwise, the following charges in addition to the interest
21 permitted in section 412:9-302 for a consumer loan made under



1 this article[+], including but not limited to a first-lien
2 mortgage loan:

3 (1) Late charges under the consumer loan on any delinquent
4 installment, or portion of the delinquent installment
5 where there has been no extension or deferment.

6 Delinquency occurs when the installment or payment is
7 not paid on the due date. Late charges shall not be
8 collected more than once for the same delinquent
9 installment. Late charges on any consumer loan shall
10 not exceed five per cent of the delinquent
11 installment, and late charges shall not be assessed on
12 any consumer loan after acceleration of the maturity
13 of the consumer loan;

14 (2) A prepayment penalty as provided in the note or other
15 form of contract signed by the borrower on any amount
16 that is voluntarily prepaid; provided that:

17 (A) The prepayment penalty on any consumer loan with
18 a term of five years or more that is primarily
19 secured by an interest in real property and in
20 which the interest rate is computed under section
21 412:9-301(2) and which is prepaid within five
22 years of the date of the loan shall be computed



1 on the amount prepaid in excess of twenty per
2 cent of the original principal amount of the loan
3 in any twelve-month period measured from the date
4 of the loan or from any anniversary of the loan
5 date. The prepayment penalty may be charged only
6 on amounts in excess of the twenty per cent
7 amount in each twelve-month period in such five-
8 year period and shall not exceed six months of
9 interest at the [~~maximum~~] then-applicable loan
10 interest rate [~~permissible for the consumer loan~~
11 ~~by law~~] on the amount prepaid; provided that the
12 interest rate is permissible under applicable
13 usury law;

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

19 (C) The prepayment penalty shall not be charged on
20 any amount that is paid because of the exercise
21 of any acceleration provision by the financial
22 services loan company;



1 (3) Extension or deferment charges on any payment on
2 account of the principal balance of a loan, or a
3 portion thereof, that is due on a particular date, but
4 is extended or deferred to a later date by mutual
5 agreement. The charges shall be based upon the amount
6 so extended or deferred at interest not exceeding that
7 permitted upon the original loan under section
8 412:9-302, for the actual period of the extension or
9 deferment. The extension or deferment charges may be
10 collected either in advance at the commencement of the
11 period of extension or deferment or otherwise as
12 agreed. The term and conditions of the extension or
13 deferment, including the amount of the consumer loan
14 so extended or deferred, and the period of, and the
15 charge for the extension or deferment shall be set
16 forth in writing and signed by the borrower with one
17 copy given to the borrower;

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

20 (A) Discount, points, loan fees, and loan origination
21 charges shall not be charged on precomputed loans



1 on which interest is computed under section
2 412:9-301(1); and
3 (B) The nonrefundable discount, points, loan fees,
4 and loan origination charges shall be permitted
5 on consumer loans on which interest is computed
6 under section 412:9-301(2) if the consumer loan
7 is secured by an interest in real property or if
8 the consumer loan is made to a lessee of land
9 subject to the Hawaiian Homes Commission Act and
10 the loan, but for the provisions of the Act,
11 would be secured by a mortgage on the leasehold
12 interest. Provided further that, except for
13 open-end loans, the nonrefundable discount,
14 points, loan fees, and origination charges shall
15 be included as interest to determine compliance
16 of the loan with the interest rate limits under
17 section 412:9-302(b)(2) when the consumer loan is
18 made.

19 The nonrefundable discount, points, loan fees, and
20 loan origination charges shall be fully earned on the
21 date the loan commitment agreement or other form of
22 contract is executed and the commitment fee paid, or



1 on the date the consumer loan is made, and shall not
2 be subject to refund on prepayment of the consumer
3 loan;

4 (5) Fees, charges, and expenses reasonably related to the
5 consumer loan that are retained by the financial
6 services loan company; provided that the fees,
7 charges, and expenses are charged only on consumer
8 loans that are secured by an interest in real
9 property; and provided further that the total dollar
10 amount of the fees, charges, and expenses, whether or
11 not itemized, shall not exceed one per cent of the
12 principal amount of the loan. The fees, charges, and
13 expenses may include but are not limited to notary
14 fees, appraisal fees, appraisal review fees, and fees
15 for the development, processing, and preparation of
16 loan documents, including deeds, promissory notes,
17 mortgages, and reconveyance, settlement, and similar
18 documents;

19 (6) Fees, charges, and expenses reasonably related to the
20 consumer loan that are actually paid to third parties,
21 affiliates, or subsidiaries for services actually
22 rendered, no portion of which is rebated, refunded, or



1 paid directly or indirectly to the financial services
2 loan company by the third parties, affiliates, or
3 subsidiaries. The fees, charges, and expenses may
4 include but are not limited to charges for credit
5 reports, actual taxes, and fees charged by a
6 governmental agency for recording, filing, or entering
7 of record any security agreements or instruments,
8 including the partial or complete release of such
9 security agreements or instruments, insurance premiums
10 of the kind and to the extent described in paragraph
11 (2) of subsection (e) of Section 226.4 of Regulation Z
12 of the Board of Governors of the Federal Reserve
13 System and to the extent that the insurance premium
14 does not exceed \$20, appraisal fees, appraisal review
15 fees, title report or title insurance fees, mortgage
16 reserve funds to be used for payment of taxes,
17 insurance, lease rent and condominium assessments,
18 real property tax services fees, wire transfer fees,
19 and attorney's fees and expenses for documentation of
20 the consumer loan or for the collection of any
21 consumer loan in default."



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

3 "§412:11-102 Examination of financial institution holding
4 company. The commissioner may from time to time conduct [~~such~~]
5 reasonable examinations of any financial institution holding
6 company that directly owns twenty-five per cent or more of any
7 class of voting securities of a Hawaii financial institution as
8 may be necessary or appropriate to determine whether the
9 condition or activities of the company are jeopardizing the
10 safety or soundness of the operations of its financial
11 institution subsidiary. The commissioner shall not conduct
12 [~~such examinations~~] an examination of any financial institution
13 holding [~~companies~~] company that indirectly controls a Hawaii
14 financial institution through one or more financial institution
15 holding companies unless the commissioner has good cause to
16 believe that [a] the financial institution holding company
17 indirectly controlling the Hawaii financial institution is
18 experiencing financial adversity [~~which~~] that will have a
19 material negative impact on the safety and soundness of [~~its~~]
20 the Hawaii financial institution [~~subsidiary~~]. The cost of
21 [~~such~~] the examinations shall be assessed against and paid by



1 the financial institution holding company in the same manner as
2 financial institutions under section 412:2-105."

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

5 "(a) No foreign bank that is licensed to establish and
6 maintain a Hawaii state branch, Hawaii state agency, or Hawaii
7 representative office shall relocate any Hawaii office without
8 the commissioner's prior written approval[~~-~~]; provided that
9 approval shall not be required if:

- 10 (1) The relocation will be less than one mile from the
- 11 foreign bank's present place of business;
- 12 (2) The foreign bank gives the commissioner written notice
- 13 at least twenty days prior to the move;
- 14 (3) The type of business carried on at the new place of
- 15 business will be the same as at the present place of
- 16 business; and
- 17 (4) There will be no financial involvement in the
- 18 relocation by a director, executive officer, or
- 19 principal shareholder, or a related interest of any of
- 20 these persons."

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

3 SECTION 9. This Act shall take effect on July 1, 2020.



Report Title:

Code of Financial Institutions; Updates; Housekeeping Amendments

Description:

Updates Hawaii's Code of Financial Institutions by requiring licenses to be conspicuously displayed, addresses temporary closures during emergencies, clarifies the authority of a person to serve as a trustee or trust company, clarifies how prepayment penalties are calculated, clarifies when the Commissioner of Financial Institutions may examine a financial institution holding company, and places a Hawaii licensed foreign bank on equal footing with a Hawaii state-chartered financial institution when relocating its place of business.

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