

S.B. NO. 1399

JAN 22 2007

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 412:2-306, Hawaii Revised Statutes, is
2 amended by amending the title to read as follows:

3 "§412:2-306 Removal or prohibition of institution-
4 affiliated party[-]; grounds."

5 SECTION 2. Section 412:3-112, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Every Hawaii financial institution, at its own
8 expense, shall file the following written reports with the
9 commissioner:

10 (1) An independent audit report of its financial
11 statements as of the close of its fiscal year shall be
12 filed by a Hawaii financial institution, other than a
13 nondepository financial services loan company or
14 credit union, within one hundred twenty days of the
15 close of its fiscal year; provided that the
16 commissioner for good cause shown may grant a
17 reasonable extension of not more than forty-five days.
18 For depository institutions, the independent audit

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1 report specified in this paragraph shall comply with
2 the requirements for annual reports under section 36
3 of the Federal Deposit Insurance Act (12 U.S.C.
4 §1831m), as amended; provided that for a depository
5 institution which, in any fiscal year, is a small
6 depository institution within the meaning of section
7 36(j) of the Federal Deposit Insurance Act, or any
8 implementing regulations thereunder, the independent
9 audit report specified in this paragraph shall comply
10 with the requirements for annual independent audits of
11 financial statements under section 36(d). For trust
12 companies, the independent audit report shall contain
13 audited financial statements prepared in accordance
14 with generally accepted accounting principles and
15 shall be based on an audit performed in accordance
16 with generally accepted auditing standards, the
17 independent auditor's report on the fair presentation
18 of the financial statements and any qualification to
19 the report, any management letter, and any other
20 report. Hawaii financial institutions that are
21 subsidiaries of a financial institution holding
22 company may satisfy the requirements of this paragraph

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1 by filing an independent audit report of the financial
2 institution holding company;

3 (2) Unaudited financial statements as of the following
4 dates shall be filed by a Hawaii financial institution
5 within thirty days of the date of the financial
6 statement as follows:

7 (A) For a trust company or credit union, the
8 statements shall be filed as of June 30 and
9 December 31 of each year;

10 (B) For a Hawaii financial institution, other than a
11 nondepository financial services loan company,
12 trust company, or credit union, the statements
13 shall be filed as of March 31, June 30, September
14 30, and December 31 of each year; and

15 (C) For a nondepository financial services loan
16 company, the statement shall be filed as of the
17 last day of the sixth month and the last day of
18 the twelfth month of each fiscal or calendar
19 year;

20 provided that the commissioner for good cause shown
21 may grant a reasonable extension of not more than
22 forty-five days.

1 The reports shall be in a form prescribed by the
2 commissioner and prepared in accordance with section
3 412:3-108. In the alternative, the institution may
4 file the Call Reports, Consolidated Reports of
5 Condition and Reports of Income, or Thrift Financial
6 Reports as of those dates which are submitted to the
7 appropriate federal regulatory agency of the
8 institution;

9 (3) A notice of any change in the office of the person who
10 has primary responsibility for the operation and
11 management of the financial institution shall be filed
12 by a Hawaii financial institution within ten days of
13 the change. The notice shall specify the name and
14 address of the person, who shall be designated that
15 institution's "chief executive officer"; ~~and~~

16 (4) A notice of any security breach, as defined by section
17 487N-1, following discovery or notification of the
18 breach in the security of personal information of
19 individuals whose personal information was, or is
20 reasonably believed to have been, acquired by an
21 unauthorized person. The notice shall be made without
22 unreasonable delay and shall be consistent with any

1 measures necessary to determine the scope of the
2 breach, and restore the reasonable integrity,
3 security, and confidentiality of the data system; and

4 [~~4~~] (5) Any other reports and other information that the
5 commissioner may require with respect to any financial
6 institution at the times and in the form as the
7 commissioner deems appropriate for the proper
8 supervision and regulation of the institution.

9 Each report shall be signed by an officer authorized by the
10 institution's board of directors to sign the report, and shall
11 contain a declaration of the officer's authority and a statement
12 that the report is true and correct."

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

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

- 17 (1) The proposed name of the financial institution;
18 (2) The specific location of its principal office,
19 branches, agencies, and support facilities, and any
20 lease agreements for such principal office, branches,
21 agencies, and support facilities;

- 1 (3) Financial statements, employment history, education,
2 management experience, and other biographical
3 information for all applicants, organizers, proposed
4 executive officers, and directors of the financial
5 institution;
- 6 (4) The name and address of each proposed subscriber of
7 capital stock in the financial institution;
- 8 (5) The proposed capital plan, if capital has not been
9 fully raised, that shall include:
- 10 (A) A description of any stock options, debentures,
11 and stock warrants offered or proposed to be
12 offered to any person; and
- 13 (B) Any stock option plan;
- 14 (6) The proposed capital stock solicitation plan, if
15 subscriptions for capital stock will be solicited,
16 that shall include:
- 17 (A) Information regarding the solicitation plan by
18 which the applicant and the proposed financial
19 institution propose to conduct the solicitation
20 of 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 financial institution's proposed policies
15 concerning loans and concentrations of credit, asset
16 and liability management, conflicts of interest,
17 investments, community reinvestment, bank secrecy,
18 anti-money laundering, and customer identification;

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

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

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

3 (15) The proposed articles of incorporation and bylaws of
4 the financial institution;

5 (16) A description of any existing or proposed service
6 corporation, affiliate, or subsidiary; [and]

7 (17) Information for each of the proposed directors and
8 executive officers of the financial institution,
9 accompanied by the appropriate payment of the
10 applicable fee for each criminal history record check
11 to be conducted in accordance with section 846-2.7;

12 and

13 [~~(17)~~] (18) Any other information that the commissioner may
14 require."

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

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

19 (1) The proposed name of the nondepository financial
20 services loan company, the location of its principal
21 office, and any lease agreements for such principal
22 office;

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

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

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1 [~~8~~] (9) Any other information that the commissioner may
2 require."

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

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

13 SECTION 6. Section 412:9-100, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 ""Fixed-rate loan" means any loan or extension of credit on
17 which the interest rate remains constant to maturity.

18 ""Step-rate loan" means a loan or extension of credit on
19 which the interest rate will increase or decrease to specified
20 rates at specified times or intervals as established on the date
21 the loan or extension of credit is originated, and the increase
22 or decrease in interest rates and the times or intervals for the

1 changes in interest rate are not subject to change and not
2 dependent upon any contingent factors.

3 "Variable rate loan" means any loan or extension of credit
4 that is not a fixed-rate loan or a step-rate loan."

5 SECTION 7. Section 412:10-103, 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 credit union;
- 10 (2) Proposed lease agreements for its principal office;
- 11 (3) The territory in which the proposed credit union will
12 operate;
- 13 (4) A business plan;
- 14 (5) Employment history, education, management experience,
15 and other biographical information for all original
16 chartering applicants, and proposed executive officers
17 of the credit union;
- 18 (6) Proposed policies regarding loans, investments,
19 operations, accounting, recordkeeping, and applicable
20 federal and state consumer laws; [~~and~~]
- 21 (7) Information for each of the original chartering
22 applicants and proposed executive officers of the

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1 credit union, accompanied by the appropriate payment
2 of the applicable fee for each criminal history record
3 check to be conducted in accordance with section 846-
4 2.7; and

5 [~~(7)~~] (8) Any other information that the commissioner may
6 require."

7 SECTION 8. Section 412:11-102, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§412:11-102 Examination of financial institution holding**
10 **company.** The commissioner may from time to time conduct such
11 reasonable examinations of any financial institution holding
12 company as may be necessary or appropriate to determine whether
13 the condition or activities of the company are jeopardizing the
14 safety or soundness of the operations of its financial
15 institution subsidiary. [~~The commissioner shall not conduct~~
16 ~~such examinations of holding companies unless the commissioner~~
17 ~~has good cause to believe that a holding company is experiencing~~
18 ~~financial adversity which will have a material negative impact~~
19 ~~on the safety and soundness of its financial institution~~
20 ~~subsidiary.] The cost of such examinations shall be assessed
21 against and paid by the financial institution holding company in~~

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

3 SECTION 9. 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 the relocation will be less
10 than one mile from the foreign bank's present place of business,
11 the foreign bank gives the commissioner written notice at least
12 twenty days prior to the move, the type of business carried on
13 at the new place of business will be the same as at the present
14 place of business, and there will be no financial involvement in
15 the relocation by a director, executive officer, or principal
16 shareholder, or a related interest of any of these persons."

17 SECTION 10. Section 846-2.7, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Criminal history record checks may be conducted by:
20 (1) The department of health on operators of adult foster
21 homes or developmental disabilities domiciliary homes
22 and their employees, as provided by section 333F-22;

- 1 (2) The department of health on prospective employees,
2 persons seeking to serve as providers, or
3 subcontractors in positions that place them in direct
4 contact with clients when providing non-witnessed
5 direct mental health services as provided by section
6 321-171.5;
- 7 (3) The department of health on all applicants for
8 licensure for, operators for, and prospective
9 employees, and volunteers at one or more of the
10 following: skilled nursing facility, intermediate
11 care facility, adult residential care home, expanded
12 adult residential care homes, assisted living
13 facility, home health agency, hospice, adult day
14 health center, special treatment facility, therapeutic
15 living program, intermediate care facility for the
16 mentally retarded, hospital, rural health center and
17 rehabilitation agency, and, in the case of any of the
18 above-related facilities operating in a private
19 residence, on any adult living in the facility other
20 than the client as provided by section 321-15.2;
- 21 (4) The department of education on employees, prospective
22 employees, and teacher trainees in any public school

- 1 in positions that necessitate close proximity to
2 children as provided by section 302A-601.5;
- 3 (5) The counties on employees and prospective employees
4 who may be in positions that place them in close
5 proximity to children in recreation or child care
6 programs and services;
- 7 (6) The county liquor commissions on applicants for liquor
8 licenses as provided by section 281-53.5;
- 9 (7) The department of human services on operators and
10 employees of child caring institutions, child placing
11 organizations, and foster boarding homes as provided
12 by section 346-17;
- 13 (8) The department of human services on prospective
14 adoptive parents as established under section 346-
15 19.7;
- 16 (9) The department of human services on applicants to
17 operate child care facilities, prospective employees
18 of the applicant, and new employees of the provider
19 after registration or licensure as provided by section
20 346-154;
- 21 (10) The department of human services on persons exempt
22 pursuant to section 346-152 to be eligible to provide

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- 1 child care and receive child care subsidies as
2 provided by section 346-152.5;
- 3 (11) The department of human services on operators and
4 employees of home and community-based case management
5 agencies and operators and other adults, except for
6 adults in care, residing in foster family homes as
7 provided by section 346-335;
- 8 (12) The department of human services on staff members of
9 the Hawaii youth correctional facility as provided by
10 section 352-5.5;
- 11 (13) The department of human services on employees,
12 prospective employees, and volunteers of contracted
13 providers and subcontractors in positions that place
14 them in close proximity to youth when providing
15 services on behalf of the office or the Hawaii youth
16 correctional facility as provided by section 352D-4.3;
- 17 (14) The judiciary on employees and applicants at detention
18 and shelter facilities as provided by section 571-34;
- 19 (15) The department of public safety on employees and
20 prospective employees who are directly involved with
21 the treatment and care of persons committed to a
22 correctional facility or who possess police powers

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1 including the power of arrest as provided by section
2 353C-5;

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

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

14 (18) The public library system on employees and prospective
15 employees whose positions place them in close
16 proximity to children as provided by section 302A-
17 601.5;

18 (19) The State or any of its branches, political
19 subdivisions, or agencies on applicants and employees
20 holding a position that has the same type of contact
21 with children, dependent adults, or persons committed
22 to a correctional facility as other public employees

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1 who hold positions that are authorized by law to
2 require criminal history record checks as a condition
3 of employment as provided by section 78-2.7;

4 (20) The department of human services on licensed adult day
5 care center operators, employees, new employees,
6 subcontracted service providers and their employees,
7 and adult volunteers as provided by section 346-97;

8 (21) The department of human services on purchase of service
9 contracted and subcontracted service providers and
10 their employees serving clients of the adult and
11 community care services branch, as provided by section
12 346-97;

13 (22) The department of human services on foster grandparent
14 program, senior companion program, and respite
15 companion program participants as provided by section
16 346-97;

17 (23) The department of human services on contracted and
18 subcontracted service providers and their current and
19 prospective employees that provide home and community-
20 based services under Section 1915(c) of the Social
21 Security Act (42 U.S.C. §1396n(c)), as provided by
22 section 346-97; [and]

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: Amend sections 412:2-306, 412:3-112(a), 412:3-201(b), 412:3-301(b), 412:8-103, 412:9-100, 412:10-103(b), 412:11-102, 412:13-222(a), and 846-2.7(b), HRS.

JUSTIFICATION: 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.

A new reporting requirement is added so that DFI will be notified promptly in the event of a security breach at a regulated financial institution involving personal information of individuals. Such notification will enable DFI to monitor, as necessary, any remedial action taken by the affected institution.

Application requirements for depository and nondepository Hawaii financial institutions are amended to require certain 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.

The 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.

New definitions are added to the chapter to clarify the meaning of a fixed-rate loan, a step rate loan, and a variable rate loan, since other provisions of the chapter apply to some, but not all, of these different loan products.

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. Foreign banks will benefit from a reduced regulatory burden and financial services loan companies will benefit from added clarity in the laws relating to fixed and variable rate loans.

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.