
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 412:3-201, 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;



- 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 of
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 of
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 one hundred eighty days, or a longer time period as
21 determined necessary by the commissioner. For purposes of this
22 section, an emergency means a situation of an unusual or



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

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

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



1 person shall use the term "trust company" as part of its name
2 unless chartered as a trust company pursuant to this chapter."

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

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

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



1 any consumer loan after acceleration of the maturity
2 of the consumer loan;

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

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



1 interest rate is permissible under applicable
2 usury law;

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

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

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



1 agreed. The term and conditions of the extension or
2 deferment, including the amount of the consumer loan
3 so extended or deferred, and the period of, and the
4 charge for the extension or deferment shall be set
5 forth in writing and signed by the borrower with one
6 copy given to the borrower;

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

9 (A) Discount, points, loan fees, and loan origination
10 charges shall not be charged on precomputed loans
11 on which interest is computed under section
12 412:9-301(1); and

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



1 open-end loans, the nonrefundable discount,
2 points, loan fees, and origination charges shall
3 be included as interest to determine compliance
4 of the loan with the interest rate limits under
5 section 412:9-302(b)(2) when the consumer loan is
6 made.

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

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



1 expenses may include but are not limited to notary
2 fees, appraisal fees, appraisal review fees, and fees
3 for the development, processing, and preparation of
4 loan documents, including deeds, promissory notes,
5 mortgages, and reconveyance, settlement, and similar
6 documents;

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



1 System and to the extent that the insurance premium
2 does not exceed \$20, appraisal fees, appraisal review
3 fees, title report or title insurance fees, mortgage
4 reserve funds to be used for payment of taxes,
5 insurance, lease rent and condominium assessments,
6 real property tax services fees, wire transfer fees,
7 and attorney's fees and expenses for documentation of
8 the consumer loan or for the collection of any
9 consumer loan in default."

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

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

- 14 (1) The proposed name of the credit union;
- 15 (2) Proposed lease agreements for its principal office;
- 16 (3) The territory in which the proposed credit union will
17 operate;
- 18 (4) A business plan;
- 19 (5) Employment history, education, management experience,
20 and other biographical information for all original
21 chartering applicants, and proposed executive officers
22 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 of
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 that directly owns twenty-five per cent or more of any
18 class of voting securities of a Hawaii financial institution as
19 may be necessary or appropriate to determine whether the
20 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]~~ an examination of any financial institution
2 holding ~~[companies]~~ company that indirectly controls a Hawaii
3 financial institution through one or more financial institution
4 holding companies unless the commissioner has good cause to
5 believe that [a] the financial institution holding company
6 indirectly controlling the Hawaii financial institution is
7 experiencing financial adversity ~~[which]~~ that will have a
8 material negative impact on the safety and soundness of ~~[its]~~
9 the Hawaii financial institution ~~[subsidiary]~~. The cost of
10 ~~[such]~~ the examinations shall be assessed against and paid by
11 the financial institution holding company in the same manner as
12 financial institutions under section 412:2-105."

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

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

20 (1) The relocation will be less than one mile from the
21 foreign bank's present place of business;



- 1 (2) The foreign bank gives the commissioner written notice
- 2 at least twenty days prior to the move;
- 3 (3) The type of business carried on at the new place of
- 4 business will be the same as at the present place of
- 5 business; and
- 6 (4) There will be no financial involvement in the
- 7 relocation by a director, executive officer, or
- 8 principal shareholder, or a related interest of any of
- 9 these persons."

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

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

- 13 (1) The department of health on operators of adult foster
- 14 homes or developmental disabilities domiciliary homes
- 15 and their employees, as provided by section 333F-22;
- 16 (2) The department of health on prospective employees,
- 17 persons seeking to serve as providers, or
- 18 subcontractors in positions that place them in direct
- 19 contact with clients when providing non-witnessed
- 20 direct mental health services as provided by section
- 21 321-171.5;



- 1 (3) The department of health on all applicants for
2 licensure for, operators for, and prospective
3 employees, and volunteers at one or more of the
4 following: skilled nursing facility, intermediate
5 care facility, adult residential care home, expanded
6 adult residential care homes, assisted living
7 facility, home health agency, hospice, adult day
8 health center, special treatment facility, therapeutic
9 living program, intermediate care facility for the
10 mentally retarded, hospital, rural health center and
11 rehabilitation agency, and, in the case of any of the
12 above-related facilities operating in a private
13 residence, on any adult living in the facility other
14 than the client as provided by section 321-15.2;
- 15 (4) The department of education on employees, prospective
16 employees, and teacher trainees in any public school
17 in positions that necessitate close proximity to
18 children as provided by section 302A-601.5;
- 19 (5) The counties on employees and prospective employees
20 who may be in positions that place them in close
21 proximity to children in recreation or child care
22 programs and services;



- 1 (6) The county liquor commissions on applicants for liquor
2 licenses as provided by section 281-53.5;
- 3 (7) The department of human services on operators and
4 employees of child caring institutions, child placing
5 organizations, and foster boarding homes as provided
6 by section 346-17;
- 7 (8) The department of human services on prospective
8 adoptive parents as established under section 346-
9 19.7;
- 10 (9) The department of human services on applicants to
11 operate child care facilities, prospective employees
12 of the applicant, and new employees of the provider
13 after registration or licensure as provided by section
14 346-154;
- 15 (10) The department of human services on persons exempt
16 pursuant to section 346-152 to be eligible to provide
17 child care and receive child care subsidies as
18 provided by section 346-152.5;
- 19 (11) The department of human services on operators and
20 employees of home and community-based case management
21 agencies and operators and other adults, except for



1 adults in care, residing in foster family homes as
2 provided by section 346-335;

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

6 (13) The department of human services on employees,
7 prospective employees, and volunteers of contracted
8 providers and subcontractors in positions that place
9 them in close proximity to youth when providing
10 services on behalf of the office or the Hawaii youth
11 correctional facility as provided by section 352D-4.3;

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

14 (15) The department of public safety on employees and
15 prospective employees who are directly involved with
16 the treatment and care of persons committed to a
17 correctional facility or who possess police powers
18 including the power of arrest as provided by section
19 353C-5;

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



- 1 (17) Private schools and designated organizations on
2 employees and prospective employees who may be in
3 positions that necessitate close proximity to
4 children; provided that private schools and designated
5 organizations receive only indications of the states
6 from which the national criminal history record
7 information was provided as provided by section
8 302C-1;
- 9 (18) The public library system on employees and prospective
10 employees whose positions place them in close
11 proximity to children as provided by section
12 302A-601.5;
- 13 (19) The State or any of its branches, political
14 subdivisions, or agencies on applicants and employees
15 holding a position that has the same type of contact
16 with children, dependent adults, or persons committed
17 to a correctional facility as other public employees
18 who hold positions that are authorized by law to
19 require criminal history record checks as a condition
20 of employment as provided by section 78-2.7;
- 21 (20) The department of human services on licensed adult day
22 care center operators, employees, new employees,



1 subcontracted service providers and their employees,
2 and adult volunteers as provided by section 346-97;

3 (21) The department of human services on purchase of
4 service contracted and subcontracted service providers
5 and their employees serving clients of the adult and
6 community care services branch, as provided by section
7 346-97;

8 (22) The department of human services on foster grandparent
9 program, senior companion program, and respite
10 companion program participants as provided by section
11 346-97;

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

18 (24) The department of commerce and consumer affairs on
19 proposed directors and executive officers of a bank,
20 savings bank, savings and loan association, trust
21 company, and depository financial services loan
22 company as provided by section 412:3-201;



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

5 (26) The department of commerce and consumer affairs on the
6 original chartering applicants and proposed executive
7 officers of a credit union as provided by section
8 412:10-103; and

9 [~~(24)~~] (27) Any other organization, entity, or the State,
10 its branches, political subdivisions, or agencies as
11 may be authorized by state law."

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

14 SECTION 13. This Act shall take effect on July 1, 2008.



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, places a Hawaii licensed foreign bank on equal footing with a Hawaii state-chartered financial institution when relocating its place of business, allows the collection of information for criminal history record checks, and allows the DCCA to conduct criminal history record checks on certain financial institution officers. (CD1)

