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



1 during the temporary closure. Notice of the reopening shall be  
2 provided to the commissioner within five days of the reopening."

3 SECTION 4. 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 5. Section 412:9-304, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§412:9-304 Consumer loan charges.** Unless specifically  
16 authorized in this article or by rule adopted by the  
17 commissioner, a financial services loan company shall only have  
18 the right to charge, contract for, and receive in advance or  
19 otherwise, the following charges in addition to the interest  
20 permitted in section 412:9-302 for a consumer loan made under  
21 this article[+], including but not limited to a first-lien  
22 mortgage loan:



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

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

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

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



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

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

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

21 (3) Extension or deferment charges on any payment on  
22 account of the principal balance of a loan, or a



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

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

18               (A) Discount, points, loan fees, and loan origination  
19               charges shall not be charged on precomputed loans  
20               on which interest is computed under section  
21               412:9-301(1); and



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

17          The nonrefundable discount, points, loan fees, and  
18          loan origination charges shall be fully earned on the  
19          date the loan commitment agreement or other form of  
20          contract is executed and the commitment fee paid, or  
21          on the date the consumer loan is made, and shall not



1 be subject to refund on prepayment of the consumer  
2 loan;

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

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





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

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



1           **"§412:11-102 Examination of financial institution holding**  
2 **company.** The commissioner may from time to time conduct [~~such~~]  
3 reasonable examinations of any financial institution holding  
4 company that directly owns twenty-five per cent or more of any  
5 class of voting securities of a Hawaii financial institution as  
6 may be necessary or appropriate to determine whether the  
7 condition or activities of the company are jeopardizing the  
8 safety or soundness of the operations of its financial  
9 institution subsidiary. The commissioner shall not conduct  
10 [~~such examinations~~] an examination of any financial institution  
11 holding [~~companies~~] company that indirectly controls a Hawaii  
12 financial institution through one or more financial institution  
13 holding companies unless the commissioner has good cause to  
14 believe that [æ] the financial institution holding company  
15 indirectly controlling the Hawaii financial institution is  
16 experiencing financial adversity [~~which~~] that will have a  
17 material negative impact on the safety and soundness of [~~its~~]  
18 the Hawaii financial institution [~~subsidiary~~]. The cost of  
19 [~~such~~] the examinations shall be assessed against and paid by  
20 the financial institution holding company in the same manner as  
21 financial institutions under section 412:2-105."



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

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

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

17 SECTION 9. This Act shall take effect on July 1, 2050.



**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.

Eff. 7/1/2050. (SD2)

