

JAN 17 2020

A BILL FOR AN ACT

RELATING TO NONDEPOSITORY TRUSTS.

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

1 SECTION 1. The legislature finds that there is a growing
2 "gap group" of consumers who need their assets to be responsibly
3 managed for them, but typically would not meet asset
4 qualifications to be serviced by banks or large investment
5 firms. These consumers may have no family member qualified or
6 available to help them manage their assets. A nondepository
7 trust charter would allow a-qualified company to fulfill a
8 fiduciary responsibility to consumers and provide investment
9 oversight. Usually independent business, these trust companies
10 operate similarly to the trust department of a bank but do not
11 take deposits or make loans. The nondepository trust company's
12 focus is fiduciary, acting as a trustee or guardian in the
13 administration of funds, estates, and other related services.
14 These nondepository trust companies, also known as independent
15 or corporate trust companies, are different than family trusts
16 because they are chartered to provide fiduciary services to the
17 public.



- 1 Accordingly, the purpose of this Act is to establish:
- 2 (1) Yearly assessments for nondepository trusts beginning
- 3 July 1, 2021;
- 4 (2) Paid-in-capital and surplus requirements for
- 5 nondepository trust companies; and
- 6 (3) Powers and duties of nondepository trust companies.

7 SECTION 2. Chapter 412, Hawaii Revised Statutes, is

8 amended by adding a new part to article 8 to be appropriately

9 designated and to read as follows:

10 **"PART . NONDEPOSITORY TRUST COMPANIES**

11 **§412:8- Powers and duties.** (a) Unless otherwise

12 prohibited or restricted by this section or any other law, a

13 nondepository trust company shall have the general powers

14 specified in section 412:8-200.

15 (b) Notwithstanding any other provision in this chapter, a

16 nondepository trust company shall not:

- 17 (1) Solicit, accept, or hold deposits;
- 18 (2) Engage in banking business;
- 19 (3) Engage in business for which a real estate broker's
- 20 license is required;



1 (4) Engage in any business for which an insurance producer
2 license is required; or

3 (5) Engage in any business of securities broker or dealer.

4 (c) A nondepository trust company shall not itself
5 perform, and instead shall contract for, the following services
6 for its clients, if needed:

7 (1) Financial advisors for client investments;

8 (2) Property management for client rental properties; or

9 (3) Real estate brokerages for client real estate
10 transactions.

11 (d) A nondepository trust company shall be responsible for
12 the performance of the service providers that it engages for its
13 clients."

14 SECTION 3. Section 412:1-109, Hawaii Revised Statutes, is
15 amended by adding a new definition to be appropriately inserted
16 and to read as follows:

17 "Total assets under management" means the total market
18 value of the assets that a trust company oversees, administers,
19 or manages on behalf of its clients pursuant to its fiduciary
20 and trust powers in article 8 of this chapter, including such
21 assets for which a trust company has engaged a third-party



1 platform investment, property management services, or real
2 estate services."

3 SECTION 4. Section 412:2-105.2, Hawaii Revised Statutes,
4 is amended to read as follows:

5 **"§412:2-105.2 Hawaii financial institutions; assessments;**
6 **fees; penalty.** (a) Beginning January 1, 2014, every Hawaii
7 financial institution shall be assessed a yearly fee in
8 accordance with the following:

9 (1) For financial institutions with total assets under
10 \$750,000, the assessment shall be the sum of \$1,000
11 plus the product of 0.00029111 times total assets;

12 (2) For financial institutions with total assets of at
13 least \$750,000 but under \$7,500,000, the assessment
14 shall be the sum of \$2,000 plus the product of
15 0.00029111 times total assets;

16 (3) For financial institutions with total assets of at
17 least \$7,500,000 but under \$20,000,000, the assessment
18 shall be the sum of \$4,800 plus the product of
19 0.00029111 times total assets;

20 (4) For financial institutions with total assets of at
21 least \$20,000,000 but under \$75,000,000, the



1 assessment shall be the sum of \$9,900 plus the product
2 of 0.000064 times total assets;

3 (5) For financial institutions with total assets of at
4 least \$75,000,000 but under \$200,000,000, the
5 assessment shall be the sum of \$15,000 plus the
6 product of 0.00005333 times total assets;

7 (6) For financial institutions with total assets of at
8 least \$200,000,000 but under \$1,000,000,000, the
9 assessment shall be the sum of \$21,100 plus the
10 product of 0.00004750 times total assets;

11 (7) For financial institutions with total assets of at
12 least \$1,000,000,000 but under \$20,000,000,000, the
13 assessment shall be the sum of \$29,000 plus the
14 product of 0.00004 times total assets;

15 provided that the yearly fee assessed for financial institutions
16 with total assets of at least \$2,000,000,000 but less than
17 \$10,000,000,000 shall be no more than \$100,000, and the yearly
18 fee assessed for financial institutions with total assets of at
19 least \$10,000,000,000 shall be no more than \$150,000.



- 1 (b) Beginning July 1, 2021, subsection (a) shall not apply
2 to nondepository trusts, and nondepository trusts shall be
3 assessed a yearly fee in accordance with the following:
- 4 (1) For nondepository trusts with total assets under
5 management under \$750,000, the assessment shall be the
6 sum of \$1,000 plus the product of 0.00029111 times
7 total assets under management;
- 8 (2) For nondepository trusts with total assets under
9 management of at least \$750,000 but under \$7,500,000,
10 the assessment shall be the sum of \$2,000 plus the
11 product of 0.00029111 times total assets under
12 management;
- 13 (3) For nondepository trusts with total assets under
14 management of at least \$7,500,000 but under
15 \$20,000,000, the assessment shall be the sum of \$4,800
16 plus the product of 0.00029111 times total assets
17 under management;
- 18 (4) For nondepository trusts with total assets under
19 management of at least \$20,000,000 but under
20 \$75,000,000, the assessment shall be the sum of \$9,900



1 plus the product of 0.000064 times total assets under
2 management;

3 (5) For nondepository trusts with total assets under
4 management of at least \$75,000,000 but under
5 \$200,000,000, the assessment shall be the sum of
6 \$15,000 plus the product of 0.00005333 times total
7 assets under management;

8 (6) For nondepository trusts with total assets under
9 management of at least \$200,000,000 but under
10 \$1,000,000,000, the assessment shall be the sum of
11 \$21,100 plus the product of 0.00004750 times total
12 assets under management;

13 (7) For nondepository trusts with total assets under
14 management of at least \$1,000,000,000 but under
15 \$20,000,000,000, the assessment shall be the sum of
16 \$29,000 plus the product of 0.00004 times total assets
17 under management;

18 provided that the yearly fee assessed for nondepository trusts
19 with total assets under management of at least \$2,000,000,000
20 but less than \$10,000,000,000 shall be no more than \$100,000,
21 and the yearly fee assessed for nondepository trusts with total



1 assets under management of at least \$10,000,000,000 shall be no
2 more than \$150,000.

3 [~~(b)~~] (c) The assessments shall be paid semiannually on
4 March 1 and September 1 of each year based on the institution's
5 total assets or total assets under management reported as of the
6 previous December 31 and June 30, respectively.

7 [~~(e)~~] (d) In addition to the assessments established in
8 subsection (a), a financial institution or financial institution
9 applicant shall pay fees as follows:

10 (1) A nonrefundable fee of \$10,000 for an application for
11 preliminary approval by the commissioner for the
12 organization of a Hawaii financial institution
13 pursuant to section 412:3-201, 412:3-202, 412:3-206,
14 or 412:3-301;

15 (2) A nonrefundable fee of \$9,000 for an application for
16 preliminary approval by the commissioner for the
17 organization of a Hawaii financial institution
18 pursuant to section 412:5-402;

19 (3) A nonrefundable fee of \$2,500 for a final application
20 for a charter or license to engage in the business of



- 1 a Hawaii financial institution pursuant to section
2 412:3-212;
- 3 (4) A nonrefundable fee of \$10,000 for an application for
4 a merger or consolidation or acquisition of control
5 involving a Hawaii financial institution;
- 6 (5) A nonrefundable fee of \$2,500 for an application for
7 the conversion of a federal financial institution to a
8 Hawaii financial institution or the conversion of a
9 Hawaii financial institution to another Hawaii
10 financial institution charter;
- 11 (6) A nonrefundable fee of \$5,000 for an application of a
12 bank to conduct a trust business through a subsidiary,
13 division, or department of the bank pursuant to
14 section 412:5-205;
- 15 (7) A nonrefundable fee of \$5,000 for an application of a
16 bank to conduct insurance activities pursuant to
17 section 412:5-205.5;
- 18 (8) A nonrefundable fee of \$5,000 for an application of a
19 bank to engage in securities activities pursuant to
20 section 412:5-205.7;



1 (9) A nonrefundable fee of \$2,000 for an application for a
 2 bank, savings bank, or depository financial services
 3 loan company to comply with lending limits applicable
 4 to federal financial institutions pursuant to section
 5 412:5-302, 412:6-303, or 412:9-404;

6 (10) A nonrefundable fee of \$2,000 for an application to
 7 exceed certain permitted investment limits pursuant to
 8 sections 412:5-305(f) and (h), 412:6-306(f) and (h),
 9 412:7-306(f) and (h), 412:8-301(f), 412:9-409(f) and
 10 (i), and 412:10-502(g); and

11 (11) A nonrefundable fee of \$2,500 for an application to
 12 engage in the business of a credit union.

13 [~~(d)~~] (e) The annual fee for each intra-Pacific financial
 14 institution and interstate branch of out-of-state banks is the
 15 sum of \$1,000 for each office, agency, and branch office
 16 maintained by the financial institution, payment of which shall
 17 be made before December 31 of each year. The commissioner may
 18 establish, increase, decrease, or repeal this fee pursuant to
 19 rules adopted in accordance with chapter 91.

20 [~~(e)~~] (f) Intra-Pacific bank fees shall be as follows:



1 (1) A nonrefundable fee of \$9,000 to establish an initial
2 branch pursuant to section 412:5-401;

3 (2) A nonrefundable fee of \$750 to establish an additional
4 branch or agency of an intra-Pacific bank; and

5 (3) A nonrefundable fee of \$500 for an application to
6 relocate a branch or agency of an intra-Pacific bank
7 established or acquired pursuant to section 412:5-401.

8 [~~f~~] (g) A nonrefundable fee of \$500 shall be assessed
9 for an application to relocate a branch or office established
10 pursuant to section 412:12-107.

11 [~~g~~] (h) A nonrefundable fee of \$100 shall be assessed
12 for each certificate of good standing for any Hawaii financial
13 institution; provided that an additional fee of \$100 shall be
14 assessed for each certificate of good standing that is requested
15 to be provided in two business days from receipt of request.

16 [~~h~~] (i) All assessments and fees shall be deposited into
17 the compliance resolution fund established pursuant to section
18 26-9(o).

19 [~~i~~] (j) For purposes of this section, "total assets"
20 means for an insured depository institution the total assets
21 reported in the financial institution's quarterly reports of



1 condition, or call reports, which are required to be filed
2 pursuant to section 7(a)(3) of the Federal Deposit Insurance Act
3 or in the unaudited financial statements filed pursuant to
4 section 412:3-112.

5 [~~(j)~~] (k) A Hawaii financial institution that fails to
6 make a payment required by this section shall be subject to an
7 administrative fine of not more than \$250 per day for each day
8 it is in violation of this section, which fine, together with
9 the amount due under this section, may be recovered pursuant to
10 section 412:2-611 and shall be deposited into the compliance
11 resolution fund established pursuant to section 26-9(o)."

12 SECTION 5. Section 412:3-209, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Every financial institution existing or organized
15 under the laws of this State shall at all times, and every
16 applicant in organization shall before filing the final
17 application for a charter or license under this part and at all
18 times thereafter, have paid-in capital and surplus of not less
19 than the following amounts for each type of institution
20 specified below:

21 Banks \$5,000,000



1	Savings banks	\$3,000,000
2	Savings and loan associations	\$2,000,000
3	Trust companies	\$1,500,000
4	<u>Nondepository trust companies</u>	<u>\$1,000,000</u>
5	Depository financial services	
6	loan companies	\$1,000,000"

7 SECTION 6. Section 412:8-101, Hawaii Revised Statutes, is
 8 amended by adding a new definition to be appropriately inserted
 9 and to read as follows:

10 "Nondepository trust company" means a type of trust
 11 company that is not authorized to accept deposits."

12 SECTION 7. Section 412:8-202, Hawaii Revised Statutes, is
 13 amended by amending subsection (a) to read as follows:

14 "(a) A trust company may act as an agent in behalf of a
 15 principal in the transaction of any business or in the
 16 management of any property, real, personal or mixed, with such
 17 powers as the trust company may exercise under sections
 18 412:8-200 [~~and~~], 412:8-201 [~~7~~], and 412:8- ; provided, that its
 19 duties as such agent and the terms and conditions of the agency
 20 or power are set forth either specifically or generally in a
 21 written memorandum signed by the principal."



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.

4

INTRODUCED BY: Roselynn H. Baker
Clarence W. Fishburne



S.B. NO. 2585

Report Title:

Financial Institutions; Nondepository Trust Companies; Powers and Duties; Assessments; Fees; Paid-in-capital and Surplus; Agent

Description:

Establishes provisions concerning nondepository trust companies.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

