

ACT 96

S.B. NO. 1079

A Bill for an Act Relating to Industrial Loan Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 408-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [No] Every industrial loan company that issues investment or thrift certificates or debentures to the public shall [have outstanding at any time its certificates, debentures, or both registered under chapter 485 in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus; provided the commissioner may limit the ratio of certificates, debentures, or both to capital and surplus which may be issued by any industrial loan company if the commissioner determines that the lower ratio is necessary in the public interest. In determining the ratio to be permitted, the commissioner shall consider all relevant circumstances, including, without limitation, the following factors:

- (1) The length of time the company has been in operation;

- (2) Ratio of losses to volume of loans made and contracts purchased;
- (3) The creation and maintenance of adequate reserve for losses;
- (4) Charge-off of uncollectable accounts;
- (5) The amount or growth of undivided profits, earned surplus, or both;
- (6) Diversification of character and source of loans made and contracts purchased;
- (7) Creation and maintenance of adequate internal controls; and
- (8) Sound and efficient management.]

maintain at least the minimum capital requirement set forth for banks in the regulations of the Federal Deposit Insurance Corporation in Part 325, Subchapter B, Chapter III, Volume 12 of the Code of Federal Regulations.

This capital requirement shall be the minimum acceptable level for industrial loan companies whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Where the commissioner determines that the financial history or condition, including off-balance sheet risk, managerial resources or the future earnings prospects of the company are not adequate or the company has a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the commissioner may determine that the minimum adequate amount of total capital or primary capital for that company is greater than the minimum standards stated in this section.

If the commissioner determines that an industrial loan company is operating with less than the minimum capital requirement, the commissioner shall serve upon the industrial loan company a written notice of intent to issue an order requiring the company to restore its capital to the minimum capital requirement within a specified time period. The notice of intent shall include the current total capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum capital requirement and any other relevant information concerning the decision to issue an order requiring the company to restore its capital to the minimum requirement. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum capital requirement may be included in the notice. The notice of intent may require the industrial loan company to submit to the commissioner for review and approval a plan describing the means and timing by which the company shall achieve the minimum capital requirement.

Within fourteen days of receipt of the notice of intent, the company may file with the commissioner a written response, explaining why the order should not be issued, seeking modification of its proposed terms, or other appropriate relief. The company's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum capital requirement.

After considering the company's response, the commissioner shall serve upon the company a written determination addressing the company's response and setting forth the commissioner's specific findings and conclusions in support of any decision to issue or not to issue the order. The order may be issued as originally proposed or in modified form. The order may direct the company to (1) achieve the minimum capital requirement by a certain date; (2) submit for approval and adhere to a plan for achieving the minimum capital requirement; (3) take other action as is necessary to achieve the minimum capital requirement; or (4) a combination of the

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above actions. If an order is to be issued, it may be served upon the company along with such final determination.

Any industrial loan company, upon a change in circumstances, may request the commissioner to reconsider the terms of an order and may propose changes in the plan under which the company is operating to meet the minimum capital requirement. The order and plan continue in effect while the request is pending before the commissioner.

All papers filed with the commissioner must be postmarked or received by the commissioner within the prescribed time limit for filing.

Failure by an industrial loan company to file a written response within the specified time period to the commissioner's notice of intent to issue an order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

Any order of the commissioner shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91."

SECTION 2. Section 408-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Upon any failure to maintain the [ratio] minimum capital required in subsection (c) [or] the industrial loan company shall take the actions in paragraphs (1) and (3) of this subsection, and upon any failure to maintain the reserve required in subsection (d), the industrial loan company shall[:] take the actions in paragraphs (1), (2) and (3) of this subsection:

- (1) Promptly take action to correct the deficiencies;
- (2) Cease making any loans or other advances or extensions of credit until the deficiencies are corrected; and
- (3) Notify the commissioner immediately, in case of any deficiency in the [ratio] minimum capital requirement, and within two working days in the case of any deficiency in the reserve requirement.

The commissioner, in writing, may direct specific directors and officers of any industrial loan company in violation of this section to take actions reasonably necessary to comply with this section."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 1987.)