

ACT 266

H.B. NO. 941

A Bill for an Act Relating to Industrial Loan Companies.

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

SECTION 1. The purpose of this Act is to allow industrial loan companies to utilize and reserve the name “financial services loan companies”. This change in designation is not intended to change the identity nor the rights, powers, and duties this industry may presently have, hold, or enjoy in any manner, but instead is submitted to accommodate the industry’s changing nomenclature and delete the use of an outdated term. For all intent and purposes, financial services loan companies are industrial loan companies.

SECTION 2. Chapter 408, Hawaii Revised Statutes, is amended to read as follows:

**“[INDUSTRIAL] FINANCIAL SERVICES LOAN
COMPANIES”**

§408-1 Application of chapter. This chapter may be cited as the [Industrial] Financial Services Loan Companies Act and shall be applicable to every person who engages in or attempts to engage in the business of an industrial loan company[.] or financial services loan company.

§408-2 Definitions. As used in this chapter and unless¹ different meaning appears from the context:

“Affiliate” means any corporation, partnership, venture, business trust, association, or any other similar organization:

- (1) Of which the industrial loan company¹ or the financial services loan company, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty per cent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or
- (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by shareholders of the industrial loan company or the financial services loan company who own or control either a majority of the shares of such company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or by the trustees for the benefit of the shareholders of any such company; or
- (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the industrial loan company[;] or the financial services loan company; or
- (4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the industrial loan company or the financial services loan company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or controls in any manner the election of a majority of the directors of such company, or for the benefit of whose shareholders all or substantially all the capital stock of such company is held by trustees.

“Billing cycle” means the time interval between periodic billing dates.

“Commissioner” means the commissioner of financial institutions of the State.

“Company” means any person to which this chapter or any portion of this chapter is applicable. The term “company” includes any foreign corporation doing business in the State.

“Consumer loan” means a loan made to a natural person primarily for a personal, family, or household purpose:

- (1) In which the principal amount does not exceed \$25,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$25,000; or
- (2) Such loan is secured by real property, or by personal property used or expected to be used as the borrower’s principal dwelling.

“Contract” means credit agreements, loan agreements, promissory notes, and other documents constituting the contract for credit.

“Engage in the business of an industrial loan company” or “engage in the business of a financial services loan company”, or “carry on the business of an industrial loan company” or “carry on the business of a financial services loan company”, or “the industrial loan business” or “the financial services loan business”, or any other term of similar import, means the loaning of money and charging, contracting for, or receiving interest, fees, compensation, or charges of whatever nature or kind for the use of money where the interest charged, contracted for, or received is in excess of the interest permitted by law other than this chapter; provided that direct financing to customers by mercantile firms or by persons engaged in the mercantile business shall not be deemed engaging in business as an industrial loan company[.] or a financial services loan company.

“Industrial loan company” or “financial services loan company” means any person who engages in the industrial loan business or the financial services loan business as defined in this chapter; provided that this definition shall not be construed to include banks, trust companies, savings and loan associations, credit unions, mortgage companies, pawnbrokers, or licensees under chapter 409. As used in this chapter the term “savings and loan association” includes “building and loan association”. A financial services loan company is an industrial loan company as the term was used in this chapter before the effective date of this Act.

“Interest” includes interest, discount, points, loan fees, and loan origination charges, if charged, contracted for, or received for the use of money, but excludes other charges, including the charges permitted by section 408-15(e) and (j).

“Licensee” means any company holding a license issued pursuant to this chapter.

“Open-end loan” means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and allowable interest and other charges are debited to the borrower’s open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and other charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The amount of credit extended to the borrower (up to any limit set by the licensee) is generally made available to the extent any outstanding balance is repaid.

“Person” means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or governmental unit.

“Primary obligor” means a person legally bound to comply with a demand for the satisfaction of any security. This definition includes the maker or endorser of a note, the corporate issuer of stock, and issuer of any security or of any other evidence of indebtedness.

“Principal” or “principal amount” means the face loan amount of the note or other form of contract.

“Section 408-3 loan” means a loan for which the interest is computed in a manner permitted by section 408-3.

“Truth in Lending Act” means the federal Truth in Lending Act (15 U.S.C. 1601, et seq.), Regulation Z₂ of the Board of Governors of the Federal Reserve System, and the Official Staff Commentary to Regulation Z prepared by the staff of the Federal Reserve Board, and amendments of the Act, Regulation Z₁ and such Commentary.

§408-2.1 Exclusiveness of name. (a) No person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless lawfully licensed and authorized to do business in this State under this chapter and actually engaged in carrying on an industrial loan business or a financial services loan company business shall transact any business under any name or title which contains the words “industrial loan” or words of similar import,¹ or “financial services loan”; or use any name or sign or circulate or use any letterhead, billhead, circular, or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an industrial loan company or financial services loan company under this chapter. The commissioner may examine the accounts, books, and records

of any person, company, association, fiduciary, partnership, or corporation to ascertain whether this section has been or is being violated.

(b) Any person violating this section shall forfeit to the State \$100 a day for every day or part thereof during which the violation continues. Upon action brought by the commissioner or any industrial loan company[,] or any financial services loan company, the court may issue an injunction restraining any person, firm, company, association, fiduciary, partnership, or corporation or agent from further violating this section or from further acting in any way or manner as to imply or lead the public to believe that its business is of an industrial loan or financial services loan character.

(c) This section shall not apply to any person, firm, company, association, fiduciary, partnership, or corporation registered to do business in the State under the name, or title, or descriptive term which contains the words "industrial loan" on or before June 12, 1982[.], or "financial services loan" on or before the effective date of this Act. Any form or type of advertisement used by such person, firm, company, association, fiduciary, partnership, or corporation shall contain a statement in the same size print as its name, or title, or descriptive term that the company is not an industrial loan company or a financial services loan company under this chapter.

(d) This section shall not apply to the use of an academic degree or a professional designation given by an accredited institution of higher education to an individual upon completion of the requirements for such degree or designation."

SECTION 3. Sections 11-199, 38-1, 207-11, 235-9, 237-23, 241-1, 241-1.5, 241-3, 328K-2, 407-92.5, 408-4, 408-5, 408-6, 408-7, 408-8, 408-10, 408-11, 408-12, 408-13, 408-14, 408-14.1, 408-14.5, 408-14.6, 408-14.7, 408-16, 408-21, 408-21.5, 408-22, 408-25, 408-26, 408-28, 408-30, 408-31, 408-32, 410-12, 411-2, 411-7, 443B-1, 446-4, 454-2, 454D-2, 476-9, 476-28, 477E-2, 478-5, 485-4, and 568:6-101,¹ Hawaii Revised Statutes, are amended by substituting the word "financial services loan", "Financial Services Loan", or "a financial services loan", for "industrial loan", "Industrial Loan", and "an industrial loan" wherever those terms appear, as the context requires.

SECTION 4. Sections 401-3, 401-5, 401-6, 401-7, 401-11, 401-14, 402-1, and 409-2, Hawaii Revised Statutes, are amended by substituting the words "financial services loan company" or "financial services loan companies", for "industrial loan and investment company" and "industrial loan and investment companies" wherever those terms appear, as the context requires.

SECTION 5. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (4) as follows:

"(4) A transaction, although subject to this article, is also subject to chapter 408 ([industrial] financial services loan companies act), chapter 409 (small loan act), and chapter 476 (credit sales act), and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

SECTION 6. This Act is intended for the purpose of changing nomenclature only and does not affect any use or meaning of the words "industrial loan company" or words of similar import in any law, rule, or document prior to the effective date of this Act. Furthermore, this Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

Note

1. So in original.