

## ACT 292

S.B. NO. 2008

A Bill for an Act Relating to Trust Company Powers.

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

SECTION 1. Chapter 406, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART .  
INSURANCE AND SECURITIES**

**§406- Authority to engage in insurance or securities business.** Any trust company or trust holding company which is not a subsidiary or affiliate of a bank or bank holding company may file an application with the commissioner for authority to establish or acquire, in whole or in part, a subsidiary or affiliate that is engaged:

- (1) Solely in the business of insurance agent, subagent, or solicitor under chapter 431; or
- (2) Solely in the business of broker or dealer under chapter 485 and the Securities Exchange Act of 1934.

**§406- Application to engage in insurance and securities business; procedure; filing.** (a) Application to the commissioner as provided in section 406- for approval shall be on a form prescribed by the commissioner; shall include information which the commissioner requires to make the findings specified in subsection (c); and shall identify the location where the trust company or trust holding company proposes to conduct insurance or securities business. The applicant shall pay to the commissioner at the time of filing the application a fee of \$500, which shall not be refundable.

(b) The commissioner may approve the application subject to any terms and conditions which the commissioner considers necessary to protect the public interest.

(c) The commissioner shall approve an application if the commissioner finds:

- (1) That the business to be established or acquired has a formal business plan to conduct its business safely and soundly and in a manner not detrimental to the safety and soundness of the applicant or any affiliate or subsidiary of the applicant;
- (2) The trust company or trust holding company and insurance or securities subsidiary or affiliate have the necessary experience, management skills, and financial capability to engage in the respective activities;
- (3) The applicant, its executive officers, directors, and principal stockholders have a record of sound performance, efficient management, financial responsibility, and integrity so that it would be in the interest of the public to approve the application;
- (4) The financial condition of the insurance or securities subsidiary or affiliate to be acquired would not jeopardize the financial stability of the applicant or any affiliate or subsidiary of the applicant, or prejudice the interests of the clients of the applicant;

- (5) That approving the application will not tend to substantially lessen competition in the relevant market or markets unless the commissioner finds that the anticompetitive effects of approving the application are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market or markets to be served;
- (6) That the character, financial responsibility and general fitness of the applicant, its officers and directors, command the confidence of the community so as to warrant the belief that the business of the trust company and its insurance and securities corporations will be honestly and efficiently conducted;
- (7) That the relationship between the applicant and the affiliate or subsidiary and the condition of the applicant and the affiliate or subsidiary will not prejudice the interests of the clients of the trust company; and
- (8) That the applicant has operated a trust company or trust holding company, in a safe and sound manner for a period of three years prior to the filing of the application.

(d) Any insurance or securities subsidiary or affiliate authorized by this chapter shall submit a report of its activities to the commissioner on July 1 of each year. The report shall contain the information required by the commissioner including:

- (1) Loans and investments made by the trust company or the trust holding company to its subsidiaries or affiliates;
- (2) Consumer complaints;
- (3) Lawsuits filed alleging a violation of chapters 406, 431, and 485; and
- (4) Income statements and balance sheets for the previous calendar year ending on December 31.

(e) After the written approval of the commissioner of financial institutions to establish an affiliate or subsidiary is given under this section, the applicant shall apply under chapter 431 to the insurance commissioner or under chapter 485 to the commissioner of securities for a license accordingly. The insurance or securities company shall be subject to primary regulation by the respective insurance commissioner or commissioner of securities; provided that the commissioner of financial institutions, in the commissioner's discretion, may examine any insurance or securities company authorized by this chapter.

(f) The applicant shall perform insurance or securities business only through a subsidiary or affiliate of a trust holding company or through a subsidiary or affiliate of a trust company, which are not subsidiaries of or affiliated with a bank or bank holding company.

**§406- Requirements to engage in insurance business.** A trust company or trust holding company authorized by the commissioner as provided in section 406- may engage in insurance business if the following requirements are met:

- (1) The insurance activities shall be physically separated by a partition or separate enclosure and clearly distinguishable from those parts of the premises in which the trust business activities are conducted;
- (2) The name of the insurance company and any assumed business name used by it shall not be identical to that of the trust company or the trust holding company;
- (3) Logos and advertisements of the insurance company shall not be identical to that of the trust company or trust holding company;

- (4) Any person acting on behalf of the insurance company to engage in insurance business shall not be employed by the trust company or trust holding company or perform any work for the trust company or trust holding company;
- (5) The insurance company shall not use nonpublic client information obtained by the trust company from an unaffiliated insurance agent to promote, develop, or solicit insurance business, without the consent of the insurance agent to use the client information;
- (6) The trust company or trust holding company shall not disclose any nonpublic information about a client in connection with the conduct of the insurance business without the consent of the client;
- (7) The insurance company shall not buy or sell any insurance without disclosing in writing to the client that the company is owned in whole or in part by the trust company or trust holding company and that the client cannot be required to buy any insurance from the company as a condition of doing business with the trust company or trust holding company. This disclosure shall be made in bold and in large type and shall be provided to the client;
- (8) The insurance company shall not conduct any insurance business with the trust company clients unless the trust company can conclusively demonstrate that the transaction is at least as favorable to the client of the trust company than if the transaction were carried out with a comparable company not affiliated with the trust company;
- (9) A majority of the board of directors of the insurance company shall be composed of persons who are neither directors nor officers of the trust company or trust holding company;
- (10) No subsidiary or affiliate as defined in section 406-1 may act as an "insurer" as defined in section 431:1-202;
- (11) The trust company shall not, in the exercise of its discretion as fiduciary or co-fiduciary, purchase or sell any insurance from the company; and
- (12) Assets and liabilities associated with the trust company or trust holding company shall be kept completely separate and not intermingled with the assets and liabilities of any insurance operations. In no event shall any liabilities or losses associated with the trust company or trust holding company activities be recoverable through the insurance guaranty fund.

**§406- Requirements to engage in securities business.** A trust company or trust holding company authorized by the commissioner as provided in section 406- may engage in securities business if the following requirements are met:

- (1) The securities activities shall be physically separated by a partition or separate enclosure and clearly distinguishable from those parts of the premises in which trust business activities are conducted;
- (2) The name of the securities company and any assumed business name used by it shall not be identical to that of the trust company or trust holding company;
- (3) Logos and advertisements of the securities company shall not be identical to that of the trust company or trust holding company;
- (4) Any person acting on behalf of the securities company to engage in its securities business shall not be employed by the trust company or

- trust holding company, or perform any work for the trust company or trust holding company;
- (5) The securities company shall not use nonpublic client information obtained by the trust company from another stock broker to promote, develop, or solicit stock brokerage business, without consent of the stock broker to use the client information;
  - (6) The trust company or trust holding company shall not disclose any nonpublic information about a client in connection with the conduct of the securities business to the securities company without the consent of the client;
  - (7) The securities company shall not buy or sell any securities without disclosing in writing to the client that the company is owned in whole or in part by the trust company or trust holding company and that the client cannot be required to buy or sell any securities through the company as a condition of doing business with the trust company or trust holding company;
  - (8) The securities company shall not conduct any securities business with the trust company clients unless the trust company can conclusively demonstrate that the transaction is at least as favorable to the client of the trust company than if the transaction were carried out with a comparable company not affiliated with the trust company;
  - (9) A majority of the board of directors of the securities company shall be composed of persons who are neither directors nor officers of the trust company or trust holding company;
  - (10) No trust company or trust holding company affiliated with a securities subsidiary or affiliate may issue a guarantee, acceptance, or letter of credit for the benefit of the securities subsidiary or affiliate;
  - (11) No trust company or trust holding company may express any opinion on the value of or the advisability of purchasing or selling securities that are being underwritten, distributed, or dealt in by the securities company without informing the client of the securities company's relationship to the trust company or trust holding company; and
  - (12) The trust company shall not, in the exercise of its discretion as fiduciary, co-fiduciary, or agent, purchase or sell any securities from the company, unless the purchase or sale is expressly authorized in writing.

**§406- Revocation or restriction of trust company or trust holding company authority.** If the commissioner finds that any of the requirements to engage respectively in the insurance business or in the securities business is violated, or that the condition of the trust company or trust holding company has substantially deteriorated so as to affect its ability to affiliate with an insurance business or securities business under section 406- or section 406- , or if the commissioner is informed by the insurance commissioner or the commissioner of securities that the condition of the insurance business or securities business has substantially deteriorated so as to affect its ability to affiliate with a trust company or trust holding company, the commissioner, after notice, shall suspend the authority of the trust company or trust holding company to affiliate with an insurance business or securities business. The commissioner after hearing as provided in chapter 91, may revoke or restrict the authority of the trust company or trust holding company to affiliate with an insurance business or securities

business. The commissioner may require the divestiture of any insurance or securities company by the trust company or trust holding company as a remedy.

**§406- Dividend restrictions.** A trust company, trust holding company, insurance affiliate, or securities affiliate, shall not pay or obligate itself to pay a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the corporate affiliate and approved by the commissioner. This restriction shall only apply to those trust companies or trust holding companies that have received regulatory approvals to engage in the insurance or securities business in accordance with sections 406- or 406-. Within thirty days prior to the payment of any dividend between affiliates, the affiliate shall notify the commissioner in writing of the event and shall provide any additional information which the commissioner may require. Dividends shall not be paid unless the payment conforms to the written policy of the affiliate and is made with the written approval of the commissioner. The commissioner may, at any time, withdraw any previous approval of a dividend policy if the commissioner determines that the withdrawal is necessary to prevent unsafe or unsound practices.

**§406- Violations.** (a) Any person who violates sections 406- or 406-, shall be subjected to an administrative fine of \$1,000 for each violation, but if the commissioner finds the violation to be wilful, the commissioner shall impose an administrative fine of up to \$10,000 for each violation. The commissioner of financial institutions may institute administrative proceedings to impose and collect the administrative fine set forth in this subsection. In addition to the administrative fine, the commissioner may order any commissions or compensation collected on the transaction to be returned to the person aggrieved by the actions of the trust company or trust holding company.

(b) This section does not limit, diminish, or modify any other administrative penalties or restrictions which may be imposed by the commissioner of financial institutions.

(c) This section does not limit or prohibit the insurance commissioner or the commissioner of securities from imposing any administrative penalties set forth in chapters 431 or 485, or any administrative rules adopted under those chapters.

(d) Any person asserting a violation of sections 406- or 406- may bring an action in the appropriate court of the judicial circuit in which the person resides. In ruling upon a claim asserting a violation of sections 406- or 406-, the court may impose a civil fine of not less than \$1,000 for each violation. Additionally, the court may order any compensation or commissions collected on the transaction to be returned to the person aggrieved by the trust company or trust holding company."

SECTION 2. Chapter 406, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§406- Transactions unlawful without approval.** (a) Unless the commissioner gives prior written approval upon written application under section 406- no person may:

- (1) Acquire, directly or indirectly, a trust company or trust holding company whose operations are principally conducted in the State;
- (2) Vote the stock of a trust company or trust holding company acquired in violation of this section;

- (3) Acquire, directly or indirectly, the voting or nonvoting securities of a trust company or a trust holding company whose operations are principally conducted in the State if the acquisition would result in that person's obtaining more than twenty-five per cent of the authorized voting securities of the trust company or trust holding company if the nonvoting securities were converted into voting securities; or
  - (4) Merge or consolidate with a trust company or a trust holding company whose operations are principally conducted in the State.
- (b) The commissioner may obtain injunctive relief to prevent any change in control or other violation of this section.

**§406- Application for approval for acquisitions and mergers.** (a) Application under section 406- to the commissioner for approval shall be on a form prescribed by the commissioner and shall include:

- (1) Information which the commissioner requires to make the findings specified in subsection (c); and
  - (2) Unless the applicant is a resident of the State, a corporation organized in the State, or a foreign corporation admitted to do business in the State, a written consent to service of process on a resident of the State in any action arising out of the applicant's activities in the State.
- (b) The commissioner may approve the application subject to any terms and conditions which the commissioner considers necessary to protect the public interest.
- (c) The commissioner may approve an application if the commissioner finds:
- (1) That the proposed transaction would not be detrimental to the safety and soundness of the applicant or to any trust company or trust holding company;
  - (2) The applicant, its executive officers, directors, and principal stockholders have established a record of sound performance, efficient management, financial responsibility, and integrity so that it would be in the interest of the customers, creditors, or shareholders of the trust company or trust holding company or the public to authorize the proposed transaction;
  - (3) The financial condition of the applicant or any trust company or trust holding company which is a participant in the proposed transaction would not jeopardize the financial stability of the applicant or trust company or trust holding company, or prejudice the interest of the customers of the applicant or other trust company or trust holding company;
  - (4) The consummation of the proposed transaction will not tend to lessen competition in the relevant market or markets substantially, unless the commissioner finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market or markets to be served; and
  - (5) The applicant has established a record of meeting the needs of the communities which it or its subsidiary or affiliates serve.
- (d) No trust company or trust holding company which is not a subsidiary or affiliate of an institution whose deposits are federally-insured, shall be acquired or merged with any other company unless that trust company's or that

trust holding company's insurance or securities subsidiary or affiliate has been voluntarily divested prior to any proposed acquisition or sale."

SECTION 3. Section 406-1, Hawaii Revised Statutes, is amended to read as follows:

**"§406-1 [Trust company defined.** The term "trust company" as used in this chapter means any corporation or joint-stock company, organized under the general laws of the State, which has obtained from the commissioner of financial institutions a certificate that it is qualified to act as a trust company under section 406-1.5.] **Definitions. As used in this chapter:**

"Affiliate" means any company that controls or is controlled by or is under common control with a trust company or trust holding company.

"Company" means any corporation (other than a bank), any partnership, sole proprietorship, individual, business trust, association, joint venture, pool syndicate, or other similar business organization.

"Commissioner" means the commissioner of financial institutions.

"Control" means the power to directly or indirectly vote twenty-five per cent or more of the voting stock of a company, trust company, or trust holding company, the ability to control in any manner the election of a majority of a company's or trust company's or trust holding company's, directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company or trust company or trust holding company.

"Principal stockholder" means any person who holds twenty-five per cent or more of the stock in the trust company or trust holding company.

"Subsidiary" means any company controlled by a trust company or trust holding company.

"Trust company" means a corporation organized under the general corporate laws of this State, which has obtained from the commissioner of financial institutions a certificate of authority that it is qualified to act as a trust company under this chapter.

"Trust holding company" means any company as defined in this chapter, other than a holding company as defined in section 403-2, which has control over any trust company or over any company that is or becomes a trust holding company."

SECTION 4. Section 406-1.5, Hawaii Revised Statutes, is amended to read as follows:

**"§406-1.5 Application to do a trust business; fee; contents.** Any corporation [or joint-stock company] organized under the laws of the State may file an application with the commissioner for authority to do business as a trust company. The applicant shall pay to the commissioner at the time of filing the application an investigation fee of \$1,000, which fee shall in no case be refunded. The application shall be in duplicate and shall specify:

- (1) The location where the company proposes to conduct its trust business. The premises shall be occupied and used solely by the trust company[.], except as provided in sections 406-\_\_\_\_\_ and 406-\_\_\_\_\_;
- (2) That the amount of the capital stock of the trust company shall be fully paid in cash to the trust company before commencement of the trust business[.];
- (3) The names and residence addresses of all subscribers to the capital stock of the trust company, including the number of shares, the

amount of the capital stock subscribed and percentage of ownership[.];

- (4) The name of the managing officer of the trust company. A separate sheet shall be attached showing the integrity, experience, and qualification of the managing officer to conduct a trust business[.];
- (5) The names and residence addresses of the proposed officers and directors of the trust company[.]; and
- (6) Any other information which the commissioner may require.

The commissioner shall grant to any corporation [or joint-stock company,] complying with the requirements of this section and sections 406-2 and 406-3, a certificate that it is qualified to act as a trust company."

SECTION 5. Section 406-2, Hawaii Revised Statutes, is amended to read as follows:

**"§406-2 Conditions precedent to doing business.** (a) No corporation [or joint-stock company] shall do business as a trust company, except on the following conditions:

- (1) Its corporate name shall contain the word "trust[.]";
- (2) It shall be organized under the laws of this State for the purpose of doing business as a trust company, and that object shall be expressed in its charter or articles of [association.] incorporation;
- (3) Its capital stock shall be not less than \$1,000,000 fully paid in cash; provided that the foregoing requirement as to paid-up capital stock shall not apply to any corporation [or joint-stock company] qualified to do business as a trust company before July 31, 1980, and having on that date a paid-up capital stock of less than the minimum requirement, or having an application for authority to do a trust business pending with the department before July 31, 1980. However, [such] a qualified trust company with less than \$1,000,000 paid-up stock shall not open an additional office or place of business after July 31, 1980, unless or until it has attained \$1,000,000 in paid-up stock. No corporation [or joint-stock company] at any time qualified to act as a trust company shall reduce its paid-up capital stock to less than the minimum requirement, and no corporation [or joint-stock company] at any time qualified to act as a trust company and having a paid-up capital stock equal to or less than the minimum requirement shall reduce its paid-up capital stock in any amount[.]; and
- (4) Its paid-in capital shall be represented by cash.

(b) To engage in insurance or securities activities set forth in this chapter, no trust company or trust holding company may invest in insurance or securities subsidiary or affiliates unless it has attained \$1,000,000 in paid-in capital. For the purposes of this section, "investments" or "invest" includes loans, endorsements, and guarantees from the trust company or trust holding company, and "paid-in capital" means the sum of \$1,000,000 as provided in subsection (a)(3). In no event shall the total investment in the stock, assets, or operations of any insurance or securities corporation exceed \$500,000 in the aggregate."

SECTION 6. Section 406-5, Hawaii Revised Statutes, is amended to read as follows:

**"§406-5 Powers of trust companies.** Every trust company shall have the



power, in addition to the general powers conferred by law upon corporations [and joint-stock companies:] applicable to and consistent with this chapter:

- (1) To take, receive, and hold, and repay, reconvey, and dispose of, any effects and property, both real and personal, which may be granted, devised, bequeathed, committed, transferred, or conveyed to it, upon any trust or trusts, at any time or times by any person or persons, including minors, body or bodies corporate, or by any state, territorial, federal, or foreign court or judge, and to administer, fulfill, and discharge the duties of the trust or trusts for such remuneration as may be agreed upon or provided by law;
- (2) To act generally as agents or attorneys in the transaction of business or management of estates, the collection of rents, interest, dividends, mortgages, bonds, bills, notes, and securities for money;
- (3) To act as agent for the purpose of buying, selling, issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality, and to manage any sinking fund therefor, on such terms as may be agreed upon;
- (4) To accept and to execute the offices of personal representative, trustee, receiver, assignee, or guardian, whether by appointment by will, by a court, or judge, or otherwise;
- (5) To loan money upon real estate and collateral security and to execute and issue its notes and debentures, payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor;
- (6) To take and receive from any individual or corporation, on deposit for safekeeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuables and personal property;
- (7) To rent out the use of safes or other receptacles upon such terms and for such compensation as may be agreed upon;
- (8) To lease, purchase, hold, and convey all such personal estate as may be necessary to carry on its business or that it may be necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions;
- (9) To execute and issue in the transaction of its business all necessary receipts, certificates, papers, and contracts which shall be signed by such person or persons as may be designated in the bylaws;
- (10) To lease, purchase, hold, and convey real estate as its corporate property;
- (11) To purchase, hold, and sell the stocks and bonds of other corporations;
- (12) To do a general trust and security business; [and]
- (13) To transact as agents any other business or undertaking, trust, mercantile, or otherwise, which may be necessary, useful, or convenient to the main purpose of the [corporation.] trust company;
- (14) To engage, through a subsidiary or affiliate, in the business of a "general agent" as defined in section 431:9-102, a "subagent" as defined in section 431:9-103, or a "solicitor" as defined in section 431:9-104, provided that a license has been obtained pursuant to chapter 431 and the rules adopted by the insurance commissioner; and
- (15) To engage, through a subsidiary or affiliate, in the business of "broker" as defined in section c(a)(4) of the Securities Exchange Act of

1934, or “dealer” as defined in chapter 485 and section c(a)(5) of the Securities Exchange Act of 1934, provided that the subsidiary or affiliate has been registered pursuant to chapter 485 and the rules adopted by the commissioner of securities.

The commissioner shall be authorized to adopt, amend, and repeal rules limiting the exercise of powers granted by this section as the commissioner shall find to be necessary to prevent unsafe and unsound trust company practices.

Nothing [herein] in this section shall be construed as giving any trust company the right to issue bills to circulate as money or to discount commercial paper, or to do a general banking business, or to do a savings bank business.

Nothing in this section shall prohibit any authority or powers permissible under federal law or regulation for a trust company or a trust holding company affiliated with a bank or bank holding company.

After June 30, 1970, no trust company shall have power to engage, directly or indirectly, in the business of acting as a real estate broker[, stockbroker, or insurance agent].”

SECTION 7. Chapter 406, Hawaii Revised Statutes, is amended as follows:

1. Sections 406-1 to 406-7 are designated as Part I.
2. Sections 406-11 to 406-17 are designated as Part II.
3. Sections 406-21 to 406-41 are designated as Part III.
4. Sections 406-51 to 406-54 are designated as Part IV.
5. Section 406-61 is designated as Part V.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstances 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 10. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect upon its approval.

(Approved June 19, 1991.)

**Note**

1. Edited pursuant to HRS §23G-16.5.