ACT 350 H.B. NO. 1628

A Bill for an Act Relating to Laws Affecting Financial Institutions.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be designated and to read as follows:

"CHAPTER 412[1]

ARTICLE 1. GENERAL PROVISIONS

§412:1-100 Short title. This chapter shall be known and may be cited as the Code of Financial Institutions.

§412:1-101 Purpose. This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are as follows:

(1) To simplify, clarify, and modernize the laws concerning the regulation, organization, management, and activities of financial institutions in this State; and

(2) To provide a comprehensive set of laws applicable to financial institutions.

§412:1-102 Scope and application of chapter. (a) This chapter shall be applicable to the following:

(1) All Hawaii financial institutions;

(2) Other persons, including foreign financial institutions, who subject themselves to special provisions of this chapter, or who, by violating any of its provisions, become subject to the penalties of this chapter; and

(3) To the extent permitted by federal law, all federal financial institutions transacting business in this State.

(b) A person shall not be deemed to be doing business in this State simply because it participates in a mortgage loan transaction with a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State by purchasing, acquiring, transferring, servicing, enforcing, or otherwise dealing with mortgaged property located in this State, or by foreclosing upon, or acquiring title to mortgaged property in case of a default under the mortgage, securing the rents and profits therefrom, or disposing of the same.

(c) Loans made by a financial institution pursuant to an agreement that a federal agency will guaranty the loan, or will purchase the loan, shall be subject to this chapter only to the extent consistent with federal law. No law of the State prescribing the nature, amount, or form of security or requiring security upon which loans may be made, or limiting the aggregate amount which is permitted to be invested in loans by reason of type of investment, or prescribing or limiting interest rates upon loans, or prescribing or limiting the period for which loans may be made shall be deemed to apply to loans made pursuant to an agreement with a federal agency that it will guaranty or purchase the loan.

§412:1-103 Application to existing financial institutions. (a) The provisions of this chapter shall apply to all financial institutions existing on the effective date of this chapter, except as provided in this section.

(b) The existence, charters, licenses, and certificates of authority of Hawaii financial institutions or foreign financial institutions formed or existing on the effective date of this chapter are not affected by the enactment of this chapter nor by any change made thereby in the requirements for the formation of Hawaii financial institutions or chartering, licensing or certification of Hawaii financial institutions or foreign financial institutions, nor by the amendment or repeal thereby of the laws under which they were formed, created, chartered, licensed or certified.

(c) Except to the extent specifically provided in this chapter, the power and authority of financial institutions existing on the effective date of this chapter shall

not be limited or restricted in any way by the enactment of this chapter nor by the amendment or repeal of the laws under which they were formed or created, or which granted such power and authority. Except to the extent specifically provided otherwise in this chapter, no federal powers granted to Hawaii financial institutions prior to the effective date of this chapter under Act 258, Session Laws of Hawaii 1969, as amended, Act 179, Session Laws of Hawaii 1969, as amended, and Act 125, Session Laws of Hawaii 1977, as amended shall be limited or restricted in any way by the enactment of this chapter.

(d) Except as otherwise provided in this section, any Hawaii financial institution which on the effective date of this chapter is not in compliance with any of the provisions of sections 412:3-104, 412:3-106, 412:3-209, 412:3-500, 412:4-104, or 412:9-101 of this chapter shall within one hundred eighty days after the effective date of this chapter inform the commissioner in writing as to the extent and nature of its noncompliance and shall simultaneously file with the commissioner a plan for achieving full compliance with such provisions. The commissioner shall thereafter review and consider the circumstances of the Hawaii financial institution and shall by order establish a date by which the institution shall fully comply, which shall not in any event be later than the third anniversary of the effective date of this chapter, unless otherwise provided herein or by federal law, or unless extended by the commissioner.

(e) A financial services loan company licensed in this State and actively engaged in business in this State on the effective date of this chapter shall have the minimum capital and surplus required for the institution under existing law of this State immediately prior to the effective date of this chapter, rather than the minimum capital and surplus required under this chapter. Upon a sale or transfer to a third party of a controlling interest in the financial services loan company, other than by devise or descent, the institution shall comply with the minimum capital and surplus requirements of this chapter.

(f) Neither the enactment of this chapter nor the amendment of this chapter nor the amendment or repeal of the laws under which financial institutions existing on the effective date of this chapter were formed or created shall void, render voidable, abrogate, terminate or amend any contract, agreement, lease, loan, commitment, indenture, restrictive covenant, participation agreement, trust, designation, appointment, agency, investment, certificate or other instrument of any description to which an existing financial institution is a party or by which it is bound, or under which it holds any rights or benefits, which were in effect immediately before the effective date of this chapter.

§412:1-104 Names. Unless authorized to engage in business as a financial institution in this State of the type indicated by the name or as otherwise approved by the commissioner, no person may use any of the terms "financial institution," "bank," "savings bank," "savings and loan," "savings association," "financial services loan company," "credit union," "trust company," "intra-Pacific bank," "international banking corporation," words of similar import, or translations of such words, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name. No financial institution may use words designating another type of financial institution, or words of similar import, or translations of such words, in a manner that suggests or might tend to lead others into believing that it is that type of financial institution.

§412:1-105 Deposits. Except as expressly authorized by this chapter, section 415-106(c), or by federal law, no person shall solicit, accept or hold deposits in this State.

§412:1-106 Headings; references. The meaning or scope of any provision of this chapter is not affected by any heading. Any references in this chapter to federal laws or regulations shall be deemed to refer to successor laws and regulations unless the reference is clearly inapplicable.

§412:1-107 Particular provisions prevail. Provisions of this chapter relating to a particular class of financial institutions or a particular matter shall prevail over provisions relating to financial institutions in general or to such matter in general.

§412:1-108 Jurisdiction conferred upon circuit court. For all matters requiring or permitting judicial action or remedy in this chapter, jurisdiction is conferred upon the circuit court of the judicial circuit in which the principal office in this State of the affected financial institution is located.

§412:1-109 Definitions. As used in this chapter, except as otherwise specifically provided herein:

"Affiliate," with respect to an existing or proposed financial institution or a financial institution holding company, means any company that controls the financial institution or the financial institution holding company and any other company that is under common control with the financial institution or the financial institution holding company.

The following shall not be considered to be an affiliate:

(1) Any company, other than a financial institution, that is a subsidiary of a financial institution;
(2) Any company engaged solely in holding or leasing the premises of a financial institution;
(3) Any company engaged solely in conducting a safe deposit business;
(4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and
(5) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or federal law or regulation.

"Aggregate net contribution to capital" of a company means the sum of amounts employed to purchase capital stock of a company and to make contributions to the company's capital and surplus, less amounts received upon the sale or redemption of capital stock of the company or received in distributions with respect to the company's capital stock other than amounts received in distributions from the accumulated net earnings of the company.

"Aggregate outstanding investment" in a company means the sum of amounts employed to purchase capital stock of a company, to make contributions to the company's capital and surplus and to invest in obligations of the company, less amounts received upon the sale or redemption of capital stock of the company, amounts received in distributions with respect to the company's capital stock other than distributions from the accumulated net earnings of the company, and amounts received to retire obligations of the company.

"Appropriate federal regulatory agency" means, with respect to a financial institution or financial institution holding company, any one or more regulatory agencies of the Federal government referred to in the following sentence which either (1) insures the deposits of the financial institution or financial institution holding company, or (2) has the power and duty to conduct periodic general examinations of the affairs of the financial institution or financial institution hold-

ing company by virtue of the legal characterization of the financial institution or financial institution holding company under federal law, and not by virtue of the fact of affiliation of the financial institution or financial institution holding company with any other person or an alleged violation of a specific law. Subject to the preceding sentence, an appropriate federal regulatory agency may be the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Board, the Office of Thrift Supervision, the National Credit Union Administration or any regulatory agency of the Federal government which shall succeed to the insurance or supervisory duties of one of the foregoing.

"Capital" means: (1) the aggregate par value or other amount received and allocated to the issued and outstanding capital stock of a financial institution; or (2) the total amount of a mutual association or a credit union's outstanding and unimpaired membership shares or share accounts.

"Capital stock" means the units of interest, whether or not having a par value, common or preferred, legally issued by a financial institution or other corporation, which represents a fractional ownership interest in the institution or corporation. The term does not include shares or membership in a mutual savings and loan association or credit union.

"Circuit court" means the court established in each of the judicial circuits of this State pursuant to chapter 603 and which has jurisdiction under section 412:1-108 over a matter.

"Commissioner" means the commissioner of financial institutions of this State.

"Common stock" means all capital stock of a financial institution or other corporation that is not preferred stock.

"Company" means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, unincorporated organization, or any form of business entity not specifically listed herein and, unless specifically excluded, a financial institution; provided that "company" does not mean any trust existing on the effective date of this chapter which under its terms must terminate within twenty-five years, or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust.

"Comparable financial institution" means:

(1) In the case of a bank that is a Hawaii financial institution, a national banking association, and vice-versa;

(2) In the case of a savings and loan association or savings bank that is a Hawaii financial institution, a federal savings and loan association or federal savings bank, and vice-versa; and

(3) In the case of a credit union that is a Hawaii financial institution, a federal credit union, and vice-versa.

"Conservator" means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for a temporary period in order to preserve and protect the assets of the institution for the benefit of its depositors, beneficiaries, creditors, and shareholders or members.

"Control" means, unless the context clearly requires otherwise, directly or indirectly, solely or through another person or transaction, or in concert with another:

(1) Owning or having the power to vote twenty-five per cent or more of any class of voting securities;

(2) Owning or having the power to exercise twenty-five per cent or more of the votes of a mutual association, credit union, or other entity whose voting rights are not determined by voting securities;

(3) Owning or having the power to vote ten per cent or more of any class of voting securities if: (A) the issuer of that class of securities has

issued any class of securities under section 12 of the Securities Exchange Act of 1934, as amended; or (B) immediately after the acquisition, no other person will own a greater percentage of that class of voting securities;

(4) Having the power to elect by any means a majority of the directors; or

(5) Having the power to exercise a dominant influence over management, if so determined by the commissioner after notice and a hearing.

No depository institution or trust company shall be deemed to own or control a company by virtue of its ownership or control of shares in a fiduciary capacity, unless that depository institution or trust company has sole voting power over a sufficient number of voting securities of the company to constitute control hereunder.

"Deposit" or "deposits" means money or its equivalent received or held by a person in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally; to a demand, checking, savings, time, passbook, negotiable order of withdrawal, thrift or share account, or which is evidenced by its passbook, certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument, or a check, draft or share draft drawn against a deposit account and certified by a person, on which the person is primarily liable.

"Depository institution" means a financial institution that is authorized to accept deposits under its chartering or licensing authority and includes a bank, savings bank, savings and loan association, depository financial services loan company, credit union, or intra-Pacific bank.

"Director" means any member of the board of directors of a financial institution, whether or not receiving compensation. An advisory director is not considered a director if the advisory director (1) is not elected by the shareholders of the financial institution, (2) is not authorized to vote on matters before the board of directors, and (3) provides solely general policy advice to the board of directors.

"Division" means the division of financial institutions of the department of commerce and consumer affairs of this State.

"Executive officer" of a financial institution means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the financial institution, whether or not: (1) the officer has an official title, (2) the title designates the officer as an assistant, or (3) the officer is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer of a financial institution are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participation (other than in the capacity of a director) in major policymaking functions of the financial institution, and (2) the officer does not actually participate in such major policymaking functions. An executive officer of a financial institution includes an executive officer of any subsidiary of the financial institution, unless the executive officer of the subsidiary (1) is excluded (by name or by title) from participation in major policymaking functions of the financial institution by resolutions of the boards of directors of both the subsidiary and the financial institution, and (2) does not actually participate in such major policymaking functions.

"Federal" means belonging to, part of, or related to the government of the United States of America.

"Federal financial institution" means a national banking association, federal savings bank, federal savings and loan association or federal credit union.

"Federal Home Loan Bank" means a federal home loan bank created and organized under the authority of the Federal Home Loan Bank Act.

"Federal Reserve Bank" means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System created and described in the Federal Reserve Act.

"Financial institution" means a Hawaii financial institution, and unless the context indicates otherwise, a federal financial institution or foreign financial institution.

"Financial institution holding company" is a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

(1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
(2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
(3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or
(4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.

"Financial institution subsidiary" means: (1) a financial institution that is controlled by a financial institution holding company, or (2) a financial institution holding company that is controlled by another holding company.

"Foreign financial institution" means a person, other than a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State, which is authorized to engage under the laws of its jurisdiction of organization, or does engage, in the business of accepting deposits or making loans or engaging in the trust business.

"Hawaii financial institution" means a corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company, and includes a corporation, mutual savings and loan association or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on the effective date of this chapter. A Hawaii financial institution may be a bank, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.

"Holding company" means any company which controls another company.

"Impaired capital and surplus" or similar language relating to impairment of capital or surplus, means that a financial institution has less than the minimum amount of capital and surplus required under this chapter for that type of financial institution.

"In concert with another" means (1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or (2) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

"Insolvency" means, with respect to a financial institution, that the value of its assets is insufficient to pay its depositors and its creditors.

"Institution-affiliated party" means any of the following:

(1) Any director, officer, employee or controlling shareholder of, or agent for, or other person that controls a financial institution;
(2) Any person who has filed or is required to file an application to become a financial institution with the commissioner or an application to acquire control of a Hawaii financial institution or financial institution holding company with the commissioner;
(3) Any shareholder, consultant, joint venture partner, and any other person as determined by the commissioner (by rule or case-by-case) who participates in the conduct of the affairs of a financial institution; or
(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any of the following which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution:
(A) Any violation of law or rule,
(B) Any breach of fiduciary duty, or
(C) Any unsafe or unsound practice.

"Loans and extensions of credit" by a financial institution means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to or for the benefit of a person made on the basis of any obligation of that person to repay the funds. "Loans and extensions of credit" includes a contractual commitment to advance funds. "Contractual commitment to advance funds" means (1) an obligation to make payments, directly or indirectly, to a third party contingent upon default by the financial institution's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or (2) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit, guarantees, puts or other similar arrangements; but does not include commercial letters of credit and similar instruments where the issuer expects the beneficiary, to draw upon the issuer, which do not guaranty payment of a money obligation, and which do not provide for payment in the event of default of the account party.

"Obligation" means any bond, debt, debenture, loan, note or similar undertaking.

"Obligor" means a person owing an obligation.

"Open to the public" means accessible or available to the general public during regular business hours without special permission.

"Operations are principally conducted" where total deposits placed with a person together with deposits placed with its subsidiaries are largest.

"Paid-in capital" means the amount of capital actually received by the financial institution for its capital stock, membership shares or share accounts, as the case may be.

"Passbook" means any book, statement of account, or other record used by a financial institution to record deposits, withdrawals, interest, dividends and changes.

"Person" means a natural person, entity or organization, including without limitation an individual, corporation, joint venture, partnership, sole proprietorship, association, cooperative, estate, trust, or governmental unit.

"Preferred stock" means capital stock in a financial institution or other corporation which entitles its holders to some preference or priority over the owners of common stock, usually with respect to dividends or asset distributions in liquidation.

"Principal shareholder" means a person other than a financial institution, that, directly or indirectly, or acting through or in concert with another, owns, controls, or has the power to vote more than ten per cent of any class of voting

securities of a financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. As used in this definition "immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

"Receiver" means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for the purpose of liquidating and winding up the affairs of the institution.

"Related interest" means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

"Retained earnings" means the net income of a financial institution earned since its inception which has not been distributed to its shareholders or transferred or allocated to capital stock or surplus or, as the case may be, the accumulated deficits of the financial institution. The term "retained earnings" is interchangeable with the term "undivided profits".

"State" or "this State" means the State of Hawaii, its political subdivisions, agencies, and departments.

"Stock financial institution" means a financial institution which issues shares of capital stock as evidence of fractional ownership in the institution. The term does not include mutual savings and loan associations or credit unions.

"Subsidiary" means a corporation, joint venture, partnership, or other company that is controlled by another corporation.

"Surplus" means an amount received by a financial institution for its capital stock, membership shares, or share accounts, as the case may be: (1) in excess of the par value of any shares having par value; or (2) in excess of the amount allocated to shares without par value, membership shares or share accounts. "Surplus" also means an amount transferred or allocated to the financial institution's surplus from retained earnings, and, unless the context otherwise clearly requires, "surplus" includes retained earnings, whether or not transferred or allocated to surplus.

ARTICLE 2. DIVISION OF FINANCIAL INSTITUTIONS

PART I. ADMINISTRATION

§412:2-100 Commissioner of financial institutions; division of financial institutions. (a) The director of commerce and consumer affairs, with the approval of the governor, shall appoint the commissioner of financial institutions. The commissioner shall be in charge of the division of financial institutions within the department of commerce and consumer affairs. The commissioner shall be the primary regulator of Hawaii financial institutions, and shall have the authority expressly conferred by or reasonably implied from the provisions of this chapter. The commissioner may be removed by the director of commerce and consumer affairs with the approval of the governor; provided that while there is any vacancy in the office of the commissioner, the director of commerce and consumer affairs shall serve as ex-officio commissioner. The commissioner shall not be subject to chapters 76 and 77.

(b) The salary of the commissioner shall be set by the director of commerce and consumer affairs but shall not be more than the maximum salary of first deputies to department heads.

(c) It shall be the primary purpose of the division of financial institutions to ensure the safety and soundness of Hawaii financial institutions and to maintain

public confidence in such institutions through the process of chartering and licensing, regulatory approval, examinations and supervision.

§412:2-101 Deputy commissioner, acting commissioner. The deputy commissioner shall have such duties as are assigned by the commissioner from time to time, and shall serve as acting commissioner whenever the commissioner is out of the State or is otherwise incapable of performing the commissioner's duties.

§412:2-102 Examiners and other personnel. The commissioner may hire as many examiners, professional employees and clerical personnel as the business of the division of financial institutions may require. The commissioner may also appoint an examiner knowledgeable in international banking who shall have the same powers and authority as other examiners, but who shall not be subject to chapters 76 and 77.

§412:2-103 Disqualifications. No person shall be an examiner who is a director of or owner of any interest, or shares of stock, in any company that may be examined pursuant to this chapter.

§412:2-104 Confidentiality of information possessed by commissioner. (a) The commissioner and all employees, contractors, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division of financial institutions, except the director of the department of commerce and consumer affairs, or unless otherwise permitted by this section or any other law regulating financial institutions or financial institution holding companies, in which case such disclosure shall not authorize or permit any further disclosure of such information. The disclosures prohibited by this section shall include without limitation information that is:

(1) Privileged or exempt from disclosure under any federal or State law;
(2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
(3) Contained in any report submitted to or for the use of the commissioner, except for the nonproprietary portions of applications;
(4) Related to the business, personal, or financial affairs of any person and is furnished to or for the use of the commissioner in confidence;
(5) Related to trade secrets and commercial or financial information obtained from a person and is privileged or confidential;
(6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating financial institutions and financial institution holding companies in an action or proceeding under parts III, IV, V and VI of this article;
(7) Related solely to the internal personnel rules or other internal practices of the commissioner;
(8) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
(9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes or records that would not be routinely available by law to a private party, including but not limited to memoranda, reports, and other documents prepared by the staff of the commissioner.

(b) The commissioner shall furnish a copy of each report of examination to the financial institution or financial institution holding company examined. The

report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee or authorized auditor, attorney or other consultant or advisor of the financial institution or financial institution holding company. Any person which has received the report from the financial institution or financial institution holding company shall be bound by the confidentiality provisions of this part. Subpoenas of or other legal process to obtain reports of examination or information contained therein shall be directed to the commissioner and not to the financial institution or financial institution holding company that is the subject of the examination. Upon receipt of such a subpoena or other legal process requiring disclosure of such information the commissioner may file a statement of objections or a motion with a court of competent jurisdiction for a protective order and, in any event, shall immediately notify the financial institution that is the subject of the report of examination of the subpoena or other legal process and all relevant circumstances pertaining to the same. Upon receipt of such notification, the financial institution may itself file a statement of objections or a motion with a court of competent jurisdiction for a protective order.

(c) The commissioner may furnish reports of examination and other information relating to the examination of a financial institution or financial institution holding company to:

(1) The governor, attorney general and the heads of other State governmental agencies having regulatory authority over the financial institution or financial institution holding company;

(2) The appropriate federal regulatory agencies of the financial institution or financial institution holding company;

(3) The Office of Comptroller of the Currency, the Federal Housing Finance Board or a federal, state, or foreign bank regulatory agency if the requesting agency agrees to use the information only for functions directly related to the exercise of its appropriate supervisory authority; and

(4) Other agencies of the United States or a state for use where necessary to investigate civil or criminal charges in connection with the affairs of any financial institution or financial institution holding company under the supervision of the commissioner.

(d) Upon the request of the financial institution or financial institution holding company, and pursuant to a proper showing of cause, the commissioner may furnish examination reports, or portions thereof, and other information relating to that financial institution or financial institution holding company (1) in instances other than those set forth in subsection (c), or (2) to persons not enumerated in subsection (c), including to prospective acquirers of the Hawaii financial institution or financial institution holding company. The decision to grant a request under this subsection shall be in the sole discretion of the commissioner.

(e) All reports or other information made available pursuant to this section shall remain the property of the commissioner, and no person, financial institution or financial institution holding company, agency or authority to whom the information is made available, or any officer, director, employee or agent thereof, shall disclose any of that information, except for the publishing of aggregate statistical material that would not disclose the identity of any person, financial institution or financial institution holding company. In exchanging reports or other information permitted in this section, the commissioner shall require the person receiving the report, as a condition of receipt, to comply with the confidentiality provisions of this section.

(f) The commissioner may provide information regarding trends and issues affecting financial institutions and may make available to the public a combined statement of the condition of Hawaii financial institutions in such form as the

commissioner may see fit, using information derived from reports furnished to the commissioner by the Hawaii financial institutions. The commissioner may also disclose statistical data regarding the number of consumer complaints filed against an institution, the general nature of the complaint and the resolution of the complaint.

(g) Any person who violates this section shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640. Such person shall also be subject to an administrative fine pursuant to section 412:2-609. If such person is an employee, contractor or appointee of the State, such person shall be subject to immediate dismissal or termination proceedings without violating such person's contract, if any.

§412:2-105 Fees and assessments. (a) The commissioner may charge an examination fee based upon the cost per hour per examiner for all financial institutions examined by the commissioner or the commissioner's staff. The hourly fee shall be established by the commissioner by rule adopted in accordance with chapter 91.

(b) In addition to the examination fee, the commissioner may charge any financial institution examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage and other reasonable expenses incurred in connection with the examination.

(c) The commissioner shall bill the affected financial institution for examination fees and expenses as soon as feasible after the close of such examination or investigation. The affected financial institution shall pay the division of financial institutions within thirty days following the billing. Unless otherwise provided by statute, all such payments shall be deposited to the general fund of the State. All disputes relating to such billings between the affected financial institution and the commissioner shall be resolved in accordance with the procedures for contested cases under chapter 91.

(d) The commissioner may, by rules adopted in accordance with chapter 91, set reasonable fee amounts to be collected by the division in connection with its regulatory functions, including, without limitation, any fees for renewals, applications, licenses and charters. Unless otherwise provided by statute, all such fees shall be deposited into the general fund of the State.

(e) A Hawaii financial institution which fails to make a payment required by this section shall be subject to an administrative fine of not more than $250 per day for each day it is in violation of this section, which fine, together with the amount due under foregoing provisions of this section, may be recovered pursuant to the provisions of section 412:2-611.

§412:2-106 Public or private hearings. (a) All hearings before the commissioner shall be subject to chapter 91 and the rules adopted pursuant thereto, unless it is expressly provided otherwise in this chapter.

(b) All actions of and proceedings before the commissioner under parts III, IV, V and VI of this article shall be closed to the public. In such proceedings, reports of examination, testimony of examiners and other evidence may be presented to substantiate or refute allegations stated in any notice of charges. Except as otherwise provided by law, no person shall divulge information regarding such actions or proceedings except to governmental authorities, to the person's directors, and to its officers, employees, attorneys, auditors, or other consultants or advisors of the person who have responsibilities related to the action or proceeding. Hearings which result from joint supervisory or enforcement actions with an appropriate federal regulatory agency shall be closed to the public, unless the procedures set forth in this section are preempted by federal law.

(c) Notwithstanding subsection (b) of this section, the commissioner may authorize the disclosure of the existence or outcome of an action or proceeding under parts III, IV, V and VI of this article and may disclose other general information concerning the action or proceeding, if the commissioner shall determine that such disclosure is in the public interest.

§412:2-107 Rules. The commissioner may adopt, amend or repeal rules pursuant to chapter 91 to effectuate the purpose of all laws within the jurisdiction of the division.

§412:2-108 Alternative mortgage loans rules. The commissioner may by rule permit financial institutions to make loans secured by mortgages that do not meet the loan-to-value ratio, payment terms, compounding of interest, or other requirements contained under this chapter, chapter 478 or other law of this State, including but not limited to, alternative mortgage loans, such as "reverse annuity" and "graduated payment" mortgage loans. Such rules may specify the borrowers eligible for such alternative mortgage loans, and the limitations, restrictions, and other requirements the commissioner shall deem appropriate.

PART II. EXAMINATIONS

§412:2-200 Examinations. (a) The commissioner shall examine each Hawaii financial institution at least once every twenty-four months, or more frequently as the commissioner may determine.

(b) The purpose of every examination shall be to ensure that such Hawaii financial institution is not engaging in illegal, unsafe, or unsound practices, that its management, business practices, and policies are prudent and sound, that it is able to meet all its obligations when due, and that it is complying with all applicable laws. With respect to examinations of nondepository financial services loan companies, the commissioner may limit the scope of the examination to compliance with all applicable laws and rules.

(c) The commissioner shall have full access to the vaults, books and papers of each Hawaii financial institution being examined, except for the contents of safe deposit boxes leased to customers, and may make such inquiries as may be necessary to ascertain the condition of such institution. To the best of their knowledge and ability, and subject to the availability of privileges or immunities under state or federal law, all directors, incorporators, officers, employees, and agents of an institution being examined shall cooperate fully with the commissioner and the commissioner's examiners, shall answer all inquiries and shall furnish all information pertaining to such inquiries.

§412:2-201 Use of federal examinations. The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:2-200 all or any part of the results of an examination conducted by a federal regulatory agency of a Hawaii financial institution for the same period or subject matter that would be covered by an examination required or permitted under this article.

PART III. ENFORCEMENT ACTIONS

§412:2-300 Enforcement actions. In enforcing the provisions of this chapter to ensure the safety and soundness of Hawaii financial institutions, the commissioner is authorized to use the powers granted to the commissioner in this part without limitation to direct the discontinuance of any violation of law, or any unsafe or unsound practice that is likely to cause insolvency or substantial dissipa-

tion of assets or earnings of the institution. The provisions of this chapter may be enforced by informal or formal actions. Informal actions include board resolutions, letter agreements, records of action, memoranda of understanding or supervisory agreements. Formal actions include cease and desist orders (whether temporary or permanent), removal orders, suspension and revocation orders, divestiture orders and orders enforcing statutory provisions. In enforcing the provisions of this chapter, a Hawaii financial institution or any institution-affiliated party may consent to the entry of any formal order.

§412:2-301 Joint enforcement with federal regulatory agency. The commissioner may enter into any agreement and take any action with the appropriate federal regulatory agency to enforce jointly all federal and state laws applicable to the Hawaii financial institution.

§412:2-302 Cease and desist orders; grounds for issuance. The commissioner may issue a temporary or permanent cease and desist order to any Hawaii financial institution or any institution-affiliated party that the commissioner finds or has reasonable cause to believe:

(1) Is violating, has violated, or is about to violate this chapter or any rules issued pursuant to this chapter;

(2) Is violating, has violated, or is about to violate any written condition imposed by the commissioner on such financial institution's authority to engage in business, or any condition of a written agreement between the financial institution and the commissioner;

(3) Is engaging, has engaged, or is about to engage in an illegal, unauthorized, unsafe or unsound practice; or

(4) Is failing to maintain books and records that are sufficiently complete and accurate so as to permit the commissioner to determine the financial condition of the institution named in the order.

§412:2-303 Permanent cease and desist orders; procedure; hearing; enforcement. (a) The notice of charges and proposed permanent cease and desist order shall be in writing and shall be served upon the institution-affiliated party or the Hawaii financial institution at its principal office in this State. The notice of charges shall state the alleged violations or wrongful practices and a summary of the facts in support of such allegations. The notice shall be accompanied by a proposed order which states the commissioner's intent to require discontinuance of such violation or practice and the immediate compliance with all requirements of any applicable agreement or law. The proposed order may also direct such affirmative action as may be necessary to prevent insolvency or to correct the alleged violation or wrongful practice. The notice of charges shall set forth a time and place for a hearing to determine whether the proposed order shall be issued.

(b) Within twenty days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order and the commissioner may issue a permanent cease and desist order. Any cease and desist order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent cease and desist order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any permanent cease and desist order, the commissioner may apply for enforcement of the order to the circuit court. Such application may also contain a petition for such other relief or remedies as may be appropriate in the circumstances. The application shall be given precedence over other cases pending in court, and shall in every way be expedited.

§412:2-304 Temporary cease and desist orders; effective date; hearing; enforcement. (a) In order to act with the utmost speed, the commissioner may issue a temporary cease and desist order upon a determination that (1) one or more of the grounds specified in section 412:2-302 are present; and (2) the violation or threatened violation or unsafe or unsound practice is likely to cause insolvency or substantial dissipation of assets or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the depositors during the period in which a permanent cease and desist order can be obtained. The order shall be accompanied by a notice of charges which states the alleged violation or wrongful practice and a summary of the facts in support of such allegation and may require discontinuance of a violation or practice, and the immediate compliance with all requirements of any applicable agreement or law. The order may also direct such affirmative action as may be necessary to prevent insolvency or to correct the alleged violation or wrongful practice. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be made permanent.

(b) The order shall be effective upon service on the Hawaii financial institution or institution-affiliated party. The order shall remain in effect until a permanent cease and desist order is issued after a hearing, a permanent cease and desist order is consented to, or the charges are dismissed upon completion of a hearing. Any affected party contesting the issuance of the temporary cease and desist order may do so by applying to the circuit court for an injunction.

(c) Within ten days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order and the commissioner may convert the temporary cease and desist order into a permanent cease and desist order. Any permanent cease and desist order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent cease and desist order shall be made to the circuit court in accordance with chapter 91.

(d) Any temporary cease and desist order may be enforced in the circuit court upon application by the commissioner. Any permanent cease and desist order issued in accordance with this section may be enforced as provided in section 412:2-303(c).

§412:2-305 Consent cease and desist orders. Any Hawaii financial institution or institution-affiliated party may waive its rights to a hearing on any notice of charges by stipulating and consenting to the issuance of a permanent cease and desist order or by stipulating and consenting to the conversion of a temporary cease and desist order into a permanent cease and desist order. Any cease and desist order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-306 Removal or prohibition of institution-affiliated party; grounds. The commissioner may order the removal of any institution-affiliated

party from office or employment with a Hawaii financial institution and the prohibition of such party's affiliation or participation in the affairs of such financial institution if the commissioner determines that all three of the following circumstances exist:

(1) The institution-affiliated party has violated this chapter or any rules issued pursuant to this chapter, violated a cease and desist order which has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;

(2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution's depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of such violation, practice, or breach; and

(3) The violation, practice, or breach involves the institution-affiliated party's personal dishonesty, or demonstrates such party's wilful or continuing disregard for the safety or soundness of the financial institution.

§412:2-307 Removal or prohibition of institution-affiliated party; procedure; hearing; enforcement. (a) The notice of charges and the proposed order of removal or prohibition shall be in writing and served upon the institution-affiliated party and the affiliated Hawaii financial institution. The notice of charges shall state the alleged violations, wrongful practices, or breaches and a summary of the facts upon which such allegations are based. The notice shall be accompanied by a proposed order stating the commissioner's intention to remove such party from office, or prohibit such party's affiliation with the financial institution, or both. The notice of charges shall set forth a time and place for a hearing to determine whether the removal or prohibition order shall be issued.

(b) Within twenty days after service upon the institution-affiliated party, unless an earlier or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the removal or prohibition order and the commissioner may issue a permanent removal or prohibition order. Any permanent removal or prohibition order issued after a hearing held in accordance with this subsection shall become effective after service upon the institution-affiliated party and shall remain effective until modified or terminated by the commissioner. Any permanent order of removal or prohibition issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution. Any appeal of a permanent removal or prohibition order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any permanent removal or prohibition order, the commissioner may apply for enforcement of the order to the circuit court.

§412:2-308 Order of immediate suspension; procedure; effective date; hearing; enforcement. (a) In order to act with the utmost speed, the commissioner may issue an order immediately suspending an institution-affiliated party upon a determination that (1) the grounds specified in section 412:2-306 are present; and (2) the protection of depositors or the financial institution warrant the immediate suspension and prohibition of the institution-affiliated party from further participation in the conduct of the affairs of the financial institution. The order shall be accompanied by a notice of charges which states the alleged violation, wrongful

practice or breach and a summary of the facts in support of such allegation. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be made permanent. Any order of immediate suspension issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution.

(b) The order shall be effective upon service on the institution-affiliated party. The order shall remain in effect until a permanent removal or prohibition order is issued after a hearing, a permanent removal or prohibition order is consented to, or the charges are dismissed upon completion of a hearing. Any institution-affiliated party contesting the issuance of the suspension order may do so by applying to the circuit court for an injunction.

(c) Within ten days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or the party's authorized representative, the party shall be deemed to have consented to the issuance of the suspension order and the commissioner may convert the suspension order into a permanent removal or prohibition order. Any permanent removal or prohibition order issued after a hearing held in accordance with this subsection shall become effective after service upon the institution-affiliated party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent removal or prohibition order shall be made to the circuit court in accordance with chapter 91.

(d) Any order of immediate suspension may be enforced in the circuit court upon application by the commissioner. Any permanent order of removal or prohibition issued in accordance with this section may be enforced as provided for in section 412:2-307(c).

§412:2-309 Consent order of removal and prohibition. Any institution-affiliated party may waive its rights to a hearing on any notice of charges by stipulating and consenting to the issuance of a permanent removal or prohibition order by stipulating and consenting to the conversion of a temporary suspension order into a permanent removal or prohibition order. Any final removal or prohibition order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-310 Removal, prohibition, or suspension; effect of order. No institution-affiliated party whose removal, prohibition or suspension has been ordered shall thereafter participate in any manner in the conduct of the affairs of the affiliated Hawaii financial institution as long as such order is in effect. Any violation of such order shall constitute a violation of law, and shall constitute sufficient grounds for the issuance of a cease and desist order to the affiliated financial institution.

§412:2-311 Suspension, revocation or surrender of charter or license. (a) The commissioner may revoke or suspend any charter or license issued hereunder if the commissioner finds that:

(1) Any information or representations submitted by an applicant in connection with the issuance of the charter or license were materially false when made;

(2) Grounds exist for the appointment of a conservator or receiver under this article; or

(3) The Hawaii financial institution, for a period of six months or more, has ceased to engage in the business for which its charter or license was granted.

(b) In issuing a suspension or revocation order, whether by consent or as a result of a chapter 91 hearing, the commissioner may impose such terms and conditions as the commissioner deems appropriate to protect the public interest. The order of suspension or revocation may require the Hawaii financial institution to cease engaging in business altogether, to close one or more of its places of business, or to cease engaging in a particular type of business, as the commissioner deems appropriate.

(c) No suspension or revocation of any charter or license shall impair or affect the obligation of any preexisting lawful contract between a Hawaii financial institution and the other party or parties. Neither shall the suspension or revocation of a charter or license affect the institution's administrative, regulatory, civil or criminal liability for any act or condition existing prior to the suspension or revocation.

(d) The commissioner shall have discretion to reinstate any suspended charter or license, or issue a new charter or license to a Hawaii financial institution whose charter or license has been revoked, if the grounds for ordering the suspension or revocation are no longer present.

§412:2-312 Suspension or revocation; procedure; hearing; enforcement. (a) The notice of charges and the proposed order of suspension or revocation shall be in writing and served upon the Hawaii financial institution at its principal office in this State. The notice of charges shall state the alleged grounds and a summary of the facts upon which such allegations are based. The notice shall be accompanied by a proposed order stating the commissioner's intention to suspend or revoke the institution's charter or license. The notice of charges shall set forth a time and place for a hearing to determine whether the suspension or revocation order shall be issued.

(b) Within twenty days after service, unless an earlier or later date is set by the commissioner upon request of the affected institution, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or the party's authorized representative, the party shall be deemed to have consented to the issuance of the suspension or revocation order and the commissioner may issue an order of suspension or revocation. Any suspension or revocation order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected institution and shall remain effective until modified or terminated by the commissioner. Any appeal of a suspension or revocation order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any suspension or revocation order, the commissioner may apply for enforcement of the order to the circuit court.

§412:2-313 Consent suspension and revocation order. Any Hawaii financial institution may waive its right to a hearing on any notice of charges by stipulating and consenting to the issuance of an order suspending or revoking a license or charter. Any final suspension or revocation order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-314 Action to correct capital and surplus impairment. (a) Whenever it appears to the commissioner that the capital and surplus of a Hawaii financial institution is impaired, the commissioner shall notify the financial institu-

tion in writing to correct the impairment within a reasonable time specified by the commissioner, which time may be extended by the commissioner.

(b) If the Hawaii financial institution fails to correct the impairment of its capital and surplus as required, the commissioner may immediately appoint a conservator, or may close the financial institution, appoint a receiver to take possession of its assets, and proceed with the liquidation of its assets. A financial institution placed in conservatorship, pursuant to this subsection may, with the consent of the commissioner, later resume business upon such conditions as the commissioner may approve.

§412:2-315 National or state emergencies. (a) The emergency powers granted in this section may be invoked for the purpose of protecting the general public during any national or state emergency by assuring that Hawaii financial institutions subject to regulation by the commissioner can operate in a safe and effective manner.

(b) If the President of the United States declares a national emergency, by proclamation or otherwise, the commissioner may order some or all Hawaii financial institutions in the State to comply with any regulations, limitations or restrictions prescribed by the Secretary of the Treasury, the Comptroller of the Currency, the Federal Reserve Board, or other federal agency that would otherwise be applicable only to a federal financial institution.

(c) If the governor declares a state emergency, by proclamation or otherwise, the commissioner may order some or all Hawaii financial institutions in the State to observe such temporary rules, limitations or restrictions as the commissioner may prescribe in order to cope with such emergency.

(d) The commissioner may assess and collect from all affected Hawaii financial institutions their ratable share of the administrative costs incurred by the division in its administration of any emergency orders issued under this section. The determination of the commissioner of which Hawaii financial institution or institutions are "affected" and the proration method the commissioner chooses to employ in making assessments under this section may be appealed to the circuit court as provided in chapter 91 by any Hawaii financial institution aggrieved thereby.

PART IV. CONSERVATORS AND RECEIVERS

§412:2-400 Grounds for appointment of conservator or receiver. A conservator or receiver may be appointed to take possession and control of a Hawaii financial institution if such financial institution:

(1) Is insolvent or has failed to correct an impairment of its capital and surplus as provided in section 412:2-314 of this chapter;
(2) Is not likely to be able to meet the demands of its depositors or pay its debts in the normal course of business;
(3) Is in an unsafe or unsound condition to transact business;
(4) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and surplus, and there is no reasonable prospect for such capital and surplus to be replenished without federal assistance;
(5) Has violated or is violating laws, rules or regulations, or has committed or is committing an unsafe or unsound practice, and such violation or practice is likely to cause insolvency or substantial dissipation of assets, or is likely to severely weaken the institution's condition or otherwise seriously prejudice the interests of its depositors;

(6) Without lawful cause has concealed from or has refused to provide to the commissioner the institution's books, papers, records, information, or assets for inspection by the commissioner or by any lawful agent of the commissioner; or

(7) Has wilfully violated or is wilfully violating a cease and desist order of the commissioner which has become effective.

§412:2-401 Appointment of conservator or receiver; judicial review. (a) The commissioner may, without notice or prior hearing, appoint a conservator or receiver for a Hawaii financial institution by a written order setting forth the grounds for such appointment and any other conditions of the conservatorship or receivership as the commissioner deems appropriate, including without limitation the temporary or permanent closure of the financial institution. The commissioner may also require the conservator or receiver other than a federal insurer to obtain a security bond, at the expense of the financial institution, in an amount that the commissioner deems appropriate.

(b) Upon being served with any written order pursuant to subsection (a), the persons in charge of the Hawaii financial institution shall forthwith turn over possession and control of the institution to the conservator or receiver, and upon request by the conservator or receiver shall vacate the premises. The conservator or receiver may apply to the circuit court for injunctive or other relief to enforce the conservatorship or receivership.

(c) Not later than twenty days after the initial appointment of the conservator or receiver, the persons who were in charge of the affected Hawaii financial institution immediately prior to the appointment of a conservator or receiver may bring an action in the circuit court for an order requiring the commissioner to terminate the conservatorship or receivership.

(d) All judicial proceedings under this section shall be closed to the public and shall take precedence over all other pending cases before the court and shall in every other way be expedited. The commissioner's decision to appoint a conservator or receiver shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

§412:2-402 Additional grounds for appointment. The commissioner may also appoint a conservator or receiver to take over the possession and control of any Hawaii financial institution:

(1) Which consents to such appointment by an affirmative vote of a majority of its board of directors, or by a majority vote of its shareholders or members; or

(2) Whose status as an insured institution has been involuntarily terminated by the federal insurer of its deposits or accounts.

An appointment pursuant to this section shall not be subject to judicial review.

§412:2-403 Who may serve as conservator or receiver. The commissioner, deputy commissioner, federal insurer of the Hawaii financial institution's deposits or accounts or other qualified person may serve as a conservator or receiver. Except for the commissioner, deputy commissioner, or federal insurer, every conservator and receiver must consent in writing to serve in such capacity, and before assuming such position shall sign an engagement agreement agreed upon by the person and the commissioner.

§412:2-404 Federal insurer as conservator or receiver; subrogation. (a) A federal insurer of the Hawaii financial institution's deposits or accounts who

serves as a conservator or receiver shall acquire both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary to perform such duties or as may be necessary under applicable federal law to effectuate such appointment.

(b) If a federal insurer pays or makes available for payment its insurance proceeds to the depositors of an institution under conservatorship or receivership, the federal insurer shall be subrogated to the rights of such depositors, whether or not the federal insurer has become conservator or receiver thereof, in the same manner and to the same extent as it would be subrogated in the conservatorship or receivership of a federal financial institution insured by such federal insurer.

§412:2-405 Removal or replacement of conservator or receiver. The commissioner may remove or replace a conservator or receiver other than a federal insurer effective upon notice thereof, and with or without cause. Such removal or replacement shall not subject either the commissioner or the court to any liability to the conservator or receiver. Such removal or replacement shall not affect the financial institution's right to obtain judicial review of the commissioner's original decision to appoint a conservator or receiver under section 412:2-401.

§412:2-406 Compensation and expenses of conservator or receiver. All expenses of any conservatorship or receivership shall be paid out of the assets of the Hawaii financial institution and shall be a lien on the assets, which shall be prior to any other lien provided by this chapter or otherwise. Such expenses shall include without limitation, all costs and expenses incurred by the State, conservator, receiver and any other person for rent, utilities, telephones, travel, equipment, supplies, and employee salaries and benefits (including state employees). No compensation shall be paid to the commissioner, the deputy commissioner or federal insurer for serving as conservator or receiver, but other persons serving in such capacity may receive a salary commensurate with the responsibilities of such position.

§412:2-407 Stay of judicial proceedings. All non-criminal judicial proceedings to which the Hawaii financial institution in conservatorship or receivership, is a party at the time of the appointment of a conservator or receiver, including without limitation any action, hearing, judgment, execution, attachment, summons, discovery or deposition, shall be stayed automatically for a period of forty-five days after the appointment of the conservator or ninety days after the appointment of a receiver. The conservator or receiver may apply to the court presiding over the judicial proceedings for an extension of the stay, which shall be granted only upon a showing that the resumption of the proceeding will substantially detract from the purposes of the conservatorship or receivership and will not significantly diminish the potential recovery or remedy of the other party or parties in the judicial proceedings.

§412:2-408 Duties and powers of conservator. (a) A conservator of a Hawaii financial institution shall observe the provisions of this part except to the extent preempted by applicable federal law.

(b) Upon assuming office, the conservator may:

(1) Immediately take possession of the assets of the Hawaii financial institution and operate the institution with all the rights and powers of the shareholders or members, directors, and officers with the authority to conduct all business of the Hawaii financial institution;

(2) Collect all obligations and money due the Hawaii financial institution;

(3) Preserve and conserve the assets and property of the Hawaii financial institution;
(4) Set aside and make available for withdrawal by depositors and payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for this purpose; and
(5) Take such action as may be necessary to carry out the purposes of the conservatorship, consistent with the conservator's appointment order, and as may be required by law, the commissioner or any court having jurisdiction over the matter. Provided, however, that the conservator shall at all times be subject to the direction and supervision of the commissioner.

§412:2-409 Conservator's segregation of deposits. (a) In the commissioner's discretion, the commissioner may order or permit a conservator to accept deposits, notwithstanding the insolvency of the Hawaii financial institution; provided, that such deposits so received shall not be subject to any limitation as to payment or withdrawal, shall be segregated and kept apart from prior deposits, and shall not be used to liquidate any indebtedness of the institution existing at inception of the conservatorship or any subsequent debt incurred for the purpose of liquidating such prior indebtedness. Such deposits received by the conservator shall be kept in cash, invested in direct obligations of the United States, or deposited with a federally insured financial institution.

(b) Any order requiring segregation of deposits under this section shall remain effective no longer than thirty days after the conservator has returned possession and control of the affairs of the Hawaii financial institution to its board of directors. At least thirty days prior to the resumption of such possession and control, the conservator shall publish in a newspaper of general circulation in every county where the financial institution has places of business open to the public, a notice stating the date that possession and control will be returned to the board of directors, and that deposits received during the conservatorship will no longer be segregated in accordance with this section more than thirty days after that date. The notice shall be in a form approved by the commissioner and shall also be conspicuously posted at the principal office and each branch and agency office of the financial institution. The notice shall also be mailed to every person who has deposited funds with the institution during the conservatorship at the depositor's last known address as reflected in the records of the institution.

§412:2-410 Supervised reorganization. (a) The commissioner and, with the commissioner's written approval, any conservator appointed pursuant to this part, may reorganize a Hawaii financial institution in conservatorship, provided that:

(1) The reorganization will be accomplished under a plan which the commissioner finds is fair and equitable to all depositors[1] beneficiaries, creditors, and shareholders or members, and is in the public interest;
(2) The commissioner has approved of the plan in writing, subject to such conditions, restrictions, and limitations as the commissioner may deem appropriate;
(3) Notice of the plan has been given to all depositors (except depositors whose deposits have been paid in full by a federal deposit insurer or assumed by a federally insured financial institution), creditors, and shareholders or members in a form and manner satisfactory to the commissioner; and

(4) After such notice, the reorganization plan shall have been consented to in writing by:

(A) Depositors representing at least seventy-five per cent of the amount of the financial institution's total deposits which will not be satisfied in full under the plan of reorganization;

(B) Creditors representing at least seventy-five per cent of the total amount of the claims of general creditors of the financial institution which will not be satisfied in full under the plan of reorganization;

(C) Subordinated creditors representing at least seventy-five per cent of the total amount of the claims of each class of debt subordinated by law or by contract to the claims of general creditors which will not be satisfied in full under the plan of reorganization; and

(D) Shareholders holding at least two-thirds of each class of the capital stock of the financial institution.

(b) If the foregoing requirements have been met, the commissioner shall issue a certificate to the Hawaii financial institution indicating that the reorganization plan, a copy of which shall be attached to the certificate, has been properly approved, and setting forth any conditions that the commissioner deems appropriate, as well as the effective date of the reorganization.

(c) Once any reorganization has become effective as provided herein, it shall be binding upon all depositors, creditors, and shareholders or members of the Hawaii financial institution, whether or not they have consented to the plan of reorganization, and all claims of such persons shall be treated as if they had consented to the plan of reorganization.

(d) When the reorganization becomes effective, all books, records, and assets of the Hawaii financial institution shall be disposed of in accordance with the plan and the affairs of the financial institution shall be conducted by its board of directors in the manner provided by the plan and under any conditions, restrictions, and limitations prescribed by the commissioner.

§412:2-411 Termination of conservatorship. The commissioner may terminate a conservatorship of a Hawaii financial institution whenever in the commissioner's judgment such action would be prudent and in the public interest. A conservatorship may also be terminated by order of the circuit court. Upon such termination, the financial institution shall be returned to the possession and control of its board of directors, or be placed in a receivership, subject to any terms and conditions imposed by the commissioner or the court. If placed in receivership, the affected Hawaii financial institution shall be entitled to judicial review as provided in section 412:2-401.

§412:2-412 Duties and powers of receiver. (a) A receiver of a Hawaii financial institution shall observe the provisions of this part, except to the extent preempted by applicable federal law.

(b) Upon assuming office, the receiver may:

(1) Immediately take possession of the assets of the Hawaii financial institution with all the rights and powers of the shareholders or members, directors and officers with the authority to conduct all business of the Hawaii financial institution;

(2) Collect all obligations and money due the Hawaii financial institution; and

(3) Take such action as may be necessary to carry out the purposes of the receivership, consistent with the receiver's appointment order, and as

may be required by law, the commissioner or any court having jurisdiction over the matter. The receiver shall at all times be subject to the direction and supervision of the commissioner.

§412:2-413 No interest on deposits of an institution in receivership. Accrual of interest on any interest-bearing deposits in a Hawaii financial institution shall cease on the date of the appointment of a receiver.

§412:2-414 Optional court supervision. Upon petition of the receiver or the commissioner at any time, the circuit court shall supervise the receivership and such proceedings shall have priority over all other matters pending before the court and shall in every other way be expedited. In case of court supervision, all matters requiring approval of the commissioner shall also require the approval of the court, and all reports required to be filed with the commissioner shall also be filed with the court.

§412:2-415 Notice of receivership; filing of claims. (a) Upon commencement of the receivership, the receiver shall promptly give notice of the fact and purpose of the receivership in a form prescribed by the commissioner and directing depositors and creditors to file any claims they might have against the institution within four months after the first publication of such notice. Such notice may be by:

(1) Publishing the notice in a newspaper of general circulation in every county where the financial institution engages in business once in each of three successive weeks;

(2) Delivering the notice to all known depositors, creditors and parties holding any assets of the financial institution; provided, however, that notice of the fact and purpose of the receivership need not be given to depositors of the institution all of whose deposits have been paid by a federal deposit insurer or assumed by a federally insured financial institution and who have received appropriate notice of such payment or assumption; and

(3) Posting the notice in the principal office and each branch and agency office of the institution.

(b) Any claim which is not filed within four months after the first date of publication of the notice required by subsection (a) shall be forever barred; provided, that this subsection shall not apply to any depositor or creditor whose claim appears on the records of the institution, to the extent shown on such records, whether or not the same is disputed.

(c) The receiver may reject a claim in writing within sixty days after receipt thereof, otherwise it shall be deemed accepted. Upon rejection of a claim by the receiver, the claimant may petition the circuit court for a review of the receiver's determination, provided that any petition for review not filed within four months after the receipt by the claimant of the notice of rejection from the receiver will be barred. In lieu of review by the circuit court of the receiver's decision to reject a claim, the parties may mutually agree to have any claim decided by binding arbitration before an arbitrator appointed by the commissioner or the court.

§412:2-416 Liquidation by receiver; priority of claims. (a) The receiver shall collect and sell or otherwise dispose of all assets of the Hawaii financial institution. For such purposes, the receiver's authority includes but is not limited to the right to sue and be sued in the name of the commissioner, the receiver, or the institution, to compromise any claim, to hire attorneys, accountants, appraisers, auctioneers, or other professional persons, to take mortgages, to enter into contracts of sale and agreements of sale, to borrow money on the institution's credit, and to

take such other measures as may be reasonable and prudent under the circumstances; provided, that any lease, mortgage, sale, exchange, or other transfer of real property, any compromise of any claim, and any pledge of the institution's assets to secure any loan shall require the prior approval of the commissioner or the court.

(b) The receiver shall not pay any claims against the Hawaii financial institution except regular costs and expenses incurred in connection with the administration of the receivership and the permitted operations of the financial institution, unless prior approval is obtained from the commissioner or the court. Once all claims against the institution have been determined, the receiver may disburse payments in the following priority:

(1) Administrative expenses, which shall include without limitation compensation of the receiver and the employees working under the receiver, fees of attorneys, accountants, appraisers, auctioneers, or other professional persons, rent, current taxes, loans for administrative expenses, expert and advisor's fees, costs of the State, and court costs;
(2) Unsecured claims for wages, salaries, commissions, including vacation, severance or sick leave pay, earned by an individual within ninety days before the receivership, in an amount not exceeding $2,000 for each individual;
(3) Claims which are given priority by applicable statutes and, if the assets are insufficient for the payment in full of all such claims, in the order provided by such statutes, or in the absence of contrary provisions, pro rata;
(4) All other claims pro rata, exclusive of claims set forth in paragraph (5) of this section; and
(5) Claims for debts that are subordinated to unsecured claims under a written subordination agreement or other instrument.

The commissioner or the court may order the payments to be made partially, as funds become available for such purpose; provided, that claims with a higher priority must be completely satisfied before any payment of claims with a lower priority.

§412:2-417 Final accounting and discharge. When all the assets of the Hawaii financial institution have been collected and all available funds have been paid as provided in this part the receiver shall file with the commissioner or the court a request for the approval of a final accounting, which shall show the disposition of all assets and shall furnish such receipts as may be required by the commissioner or the court.

§412:2-418 Transfer of assets in contemplation of insolvency void. All transfers, assignments, and payments by any Hawaii financial institution made after or in contemplation of the institution's insolvency shall be void if done with the intent to evade this chapter or to accord preference to any depositor or creditor over another.

§412:2-419 Treatment of lessors. (a) For a period of six months after appointment of a receiver, a lessor may not terminate any lease of personal or real property to the Hawaii financial institution as long as lease rent for the period following the receivership is paid on a timely basis, whether or not the lease has suffered a prior default.

(b) Within six months after initial appointment, the receiver may assume or reject any unexpired lease, and if not assumed within such time the lease shall be deemed to have been rejected; provided, however, that in order to assume any lease:

(1) The unexpired lease term must be at least thirty days at the time of the assumption;
(2) Any prior default must be cured, or the receiver must provide adequate assurance that such default will be promptly cured;
(3) The receiver must provide adequate compensation to any party other than the financial institution for any actual pecuniary loss resulting to such party from such default; and
(4) The receiver must provide adequate assurance to the lessor of future performance under the lease.

(c) The lessor of a lease rejected under this section shall have a claim against the Hawaii financial institution in receivership for damages resulting from the rejection in an amount which may not exceed the unpaid rent owed under the lease, without acceleration, for a six month period.

(d) Rejection of a lease under this section shall not result in the termination of the lease with respect to the interest of any mortgagee or other person having an interest in the lease other than the Hawaii financial institution.

§412:2-420 Claims for wrongful termination of employment. Recovery on a claim against an insolvent Hawaii financial institution in receivership resulting from wrongful termination of an employment contract shall not exceed the unpaid compensation, without acceleration, pursuant to the contract when the employee was directed to terminate or when the employee actually terminated performance under the contract, whichever first occurred, plus compensation as provided under the contract, without acceleration, for ninety days thereafter.

§412:2-421 Bailments and safe deposit boxes in receivership. (a) If a Hawaii financial institution in receivership has any personal property in its possession as bailee for storage or safekeeping, or if it has any vaults, safes, or safe deposit boxes rented by customers, the receiver shall notify the affected customer at the customer's last known address as reflected in the records of the financial institution. Any notice shall be sent by certified mail, return receipt requested, and shall direct the customer to remove the personal property by a date stated in the notice, which date shall not be less than ninety days after mailing of the notice.

(b) If and when the property is claimed by the customer, any unearned fees for rent or bailment shall be refunded to the customer and shall be treated as an administrative expense of the receivership. Any unpaid fees for rent or bailment shall be collected from the customer or shall be carried as a receivable on the books of the institution.

(c) If the property is not claimed by the date set forth in the notice provided for in subsection (a), the receiver shall cause the safe, vault or safe deposit box to be opened before two witnesses who are not employed by the Hawaii financial institution. Such property shall be placed in a suitable container together with a list, signed by the witnesses, containing a description of the property, the name and address of the customer and the names of the witnesses. The receiver shall keep the property in one of the general vaults, safes or boxes of the financial institution, or other depository, until it is claimed by the owner.

(d) If the property is not claimed within two years after the date set forth in the notice provided for in subsection (a), the receiver may sell the property at public auction, subject to the approval of the commissioner or the court. The receiver may deduct from the proceeds of such sale any unpaid fees for rental or bailment, which shall be an asset of the institution, and the balance shall be disposed of in accordance with chapter 523A. Papers and other items of no apparent value may be destroyed.

PART V. SUPERVISED ACQUISITION OF FINANCIAL INSTITUTIONS

§412:2-500 Definitions. As used in this part: "Failing financial institution" means a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State, and which:

(1) Is insolvent or has failed to make good an impairment of its capital and surplus as provided in section 412:2-314;

(2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and surplus, and there is no reasonable prospect for such capital and surplus to be replenished without federal assistance; or

(3) Has violated or is violating laws, rules or regulations, or has committed or is committing an unsafe or unsound practice, and such violation or practice is likely to cause insolvency or a substantial dissipation of assets or is likely to severely weaken the institution's condition or otherwise seriously prejudice the interests of its depositors.

"Qualifying state" means a state, other than Hawaii, in the Twelfth Federal Reserve District as designated in 12 U.S.C. §222.

§412:2-501 Commissioner's determination of failing institution. (a) Upon determining that a Hawaii financial institution is a failing financial institution, the commissioner shall serve written notice of such determination to the institution. The notice shall set forth the basis for the commissioner's determination, and shall indicate that the commissioner intends to implement the provisions of this part.

(b) If the financial institution contests the commissioner's determination, it shall petition the circuit court to enjoin the commissioner's action, not more than five days after receiving notice of the commissioner's determination that it is a failing financial institution. A hearing on the petition shall be held not more than fifteen days after the petition is filed, and in all other respects the matter shall be expedited. The hearing under this subsection shall be closed to the public.

(c) An order by the circuit court made pursuant to this section may be appealed to the supreme court, but no stay of the order shall be granted pending such appeal.

(d) All court records, documents and files of the financial institution, the division of financial institutions, and the court, so far as they pertain to or are part of the record of the proceedings, shall be and remain confidential. The court may, after hearing the arguments from the parties in chambers, order disclosure of documents for good cause. Unless otherwise ordered, all papers filed with the court shall be sealed from the public and held in a confidential file.

(e) Nothing in this section shall preclude any action by the commissioner under any of the other powers granted to the commissioner by this chapter.

§412:2-502 Solicitation of purchasers. If the court sustains the commissioner's determination that the financial institution is a failing financial institution, or if the institution has not contested such determination and the time for petitioning the court has passed, the commissioner may solicit applications to merge with the failing financial institution or with its holding company, or to purchase all or part of the assets or assume all or part of the liabilities of the failing financial institution, or to purchase the capital stock of the failing financial institution or its holding company. Such solicitation may be by private letter, by personal contact, or by publication, as in the commissioner's discretion may be appropriate in order to

obtain as many fair offers as possible with the least danger to the safety of the failing financial institution, its depositors and creditors, and the general public. The commissioner may disclose such information concerning the failing financial institution as shall be necessary for the prospective applicants to formulate a proposal to purchase, provided that the recipients of such information shall be required to be required to[1] keep the same confidential.

§412:2-503 Applications to purchase. (a) If the failing financial institution is a bank, savings bank, or depository financial services loan company that is a Hawaii financial institution, or if the institution to result from the acquisition proposed in the application is to be any of the foregoing, the commissioner may accept an application under this part only from:

(1) A Hawaii financial institution;
(2) A federal financial institution whose operations are principally conducted in this State (unless the operations of any holding company of such an applicant are principally conducted in a state other than Hawaii or a qualifying state);
(3) A financial institution whose operations are principally conducted in a qualifying state (unless the operations of any holding company of such an applicant are principally conducted in a state other than Hawaii or a qualifying state);
(4) The holding company of any of the foregoing, if any (unless the operations of such holding company or any holding company of such holding company are principally conducted in a state other than Hawaii or a qualifying state); and
(5) A person that is not a company.

(b) No application shall be accepted which provides for a merger or consolidation of a failing financial institution or a purchase of its assets or assumption of its liabilities, or a purchase of its capital stock if, as a result of such merger, consolidation, purchase or assumption, any person would be eligible to receive deposits in this State other than through a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State.

(c) An application filed under this part shall contain such information as the commissioner may require, and shall indicate:

(1) Whether the applicant proposes to merge with the failing financial institution, purchase all or part of its assets and assume all or part of its liabilities or purchase its capital stock;
(2) The consideration to be paid; and
(3) How the proposed purchase will promote the safety and soundness of the failing financial institution, protect its depositors and creditors, and otherwise be in the public interest.

(d) The commissioner may establish a reasonable deadline for the receipt of applications.

§412:2-504 Granting of application; criteria for approval. In evaluating the applications filed under this part, the commissioner shall consider the following factors:

(1) Whether immediate action is necessary;
(2) The financial and managerial resources of the applicant and its holding company, if any;
(3) The probable viability of the failing financial institution after the acquisition or merger has been completed;
(4) Whether any federal agency is prepared to offer financial assistance to facilitate the acquisition or merger, and the amount of such assistance;

(5) Whether the effect of the proposed acquisition or merger may be substantially to lessen competition, or tend to create a monopoly or restraint of trade in any section of the country that includes the State or a part thereof, and whether these anti-competitive effects would be clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
(6) The convenience and needs of the public;
(7) The welfare of the depositors and creditors of the failing financial institution;
(8) The principal place of business of the applicant, the state where its operations and those of its affiliates are principally conducted, and their current business relationships with Hawaii-based businesses; and
(9) Any other factors which the commissioner may deem relevant.

The commissioner may negotiate with all or any of the applicants to modify any proposal, may accept more than one proposal if one involves only part of the assets or stock of the failing financial institution, and may condition any approval of an application upon the observance of such requirements as the commissioner deems appropriate. Nothing in this section shall require the commissioner to approve any application or accept any proposal made pursuant to this part.

§412-2:505 Granting of applications; priorities. In considering applications under this part, the commissioner shall give priority to the following tiers:

(1) First, to Hawaii financial institutions and federal financial institutions whose operations are principally conducted in this State (unless the operations of any holding company of any such Hawaii financial institution or federal financial institution are principally conducted in a state other than Hawaii), to holding companies of the foregoing (unless the operations of any such holding company or the operations of any holding company of such holding company are principally conducted in a state other than Hawaii), and to persons that are not companies;
(2) Second, to financial institutions whose operations are principally conducted in a qualifying state and to holding companies of the foregoing (unless the operations of any such holding company or the operations of any holding company of such holding company are principally conducted in a state other than Hawaii or a qualifying state); and
(3) Third, to any other person whose application may be approved under this part.

Before a financial institution, holding company, or person described in paragraph (2) or (3) may be considered, all Hawaii institutions and holding companies which the commissioner deems to be qualified to submit any proposal to acquire not less than substantially all of the deposits or federally insured deposits of the failing financial institution must affirmatively decline to submit any proposal to acquire only the deposits of the failing financial institution.

§412:2-506 Charter or license. In any acquisition pursuant to this part, a charter or license shall be required for:

(1) Any Hawaii financial institution resulting from a consolidation of an acquirer with a failing financial institution; and
(2) Any new corporation (except a federal financial institution) formed to merge with or acquire the assets of a failing financial institution pursuant to this chapter, whether or not a provisional approval to organize has been issued to such corporation.

§412:2-507 Expedited approvals. If the commissioner finds that immediate action is necessary in order to prevent the probable failure of the Hawaii financial institution, as determined by section 412:2-501, the commissioner shall have the power to issue an expedited approval authorizing the following:

(1) In the case of a Hawaii financial institution seeking to acquire the failing financial institution, expedited approval for the establishment of a branch;

(2) In the case of a new corporation, or for a qualified bidder from a qualifying state, a charter for a bank or savings bank or a license to engage in the business of a depository financial services loan company provided that the applicant has secured provisional approval to organize as required in section 412:2-508.

§412:2-508 Provisional approval to organize. (a) The commissioner may issue a provisional approval to organize a new corporation pursuant to this chapter and chapter 415 solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of a failing financial institution in a transaction meeting the requirements of this part and other applicable law.

(b) Applications for a provisional approval shall be filed with the commissioner, and shall provide the information required by this chapter for preliminary approval to organize the type of financial institution that will result from the merger or acquisition under this part. The applicant shall also furnish such other information as the commissioner may require, and an application fee as established by the commissioner.

(c) The commissioner may expedite consideration of an application filed under this section, and may grant the application for a provisional approval without any investigation or publication of notice or informational and comment proceeding; provided, that if after granting of approval, the commissioner discovers any reason why approval should not have been granted, the approval may be revoked by giving written notice of revocation to the applicant.

(d) Except as otherwise provided in this section, the provisional approval shall enable the applicant to accomplish only the merger or acquisition, or both, as shall be specified in the approval.

(e) Any provisional approval shall expire one year after it has been granted, or upon issuance of a charter or license as provided in this chapter, whichever first occurs. The commissioner may extend the expiration date of a provisional approval for good cause. If the merger or acquisition is not consummated before the expiration of the provisional approval, or any extended time granted by the commissioner the approval shall be void and of no further effect.

§412:2-509 Effect of merger or acquisition on prior business, title and obligations. Sections 412:3-610 and 412:3-615 shall apply to the businesses previously carried on by any failing financial institution, title to its property, and its liabilities with respect to any merger or acquisition consummated under this part.

§412:2-510 Commissioner's powers. No provision under this part shall be construed to limit, modify, or restrain any other powers otherwise granted to the commissioner or the division. The provisions of this part shall supplement and provide an alternative to the commissioner's other authority and powers under this article.

§412:2-511 Modification of time periods. Any time periods requiring action by the commissioner as set forth in this part, or as established by rules

implementing this part, may be shortened or extended when in the commissioner's discretion good cause exists.

§412:2-512 Nonseverability. It is the express intent of the legislature to specifically authorize the acquisition of a failing financial institution by an out-of-state institution only as provided in this part, and notwithstanding the restrictions set forth in the Bank Holding Company Act of 1956, as amended (12 U.S.C. §§1841 et seq.), and, accordingly, the provisions of this part are not severable. If any provision of this part is determined to be invalid, then this entire part shall be of no force and effect, except that transactions already conducted under the authority of this part prior to such determination of invalidity shall not be thereby affected.

PART VI. PENALTIES, ADMINISTRATIVE FINES AND PROHIBITED ACTS

§412:2-600 Applicability of part. (a) The provisions of this part shall apply to all Hawaii financial institutions and to such other persons as shall, by violating any of the provisions of this part, be subject to the penalties and administrative fines provided in this part. The provisions of this part shall be in addition to the prohibitions set forth elsewhere in this chapter.

(b) If a contract is made or any other act is done or omitted in good faith reliance on an interpretation of this chapter made by the supreme court of this State or in a rule duly adopted by the commissioner pursuant to chapter 91, no penalty imposed by this chapter shall apply, notwithstanding that after such contract is made, such interpretation or rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§412:2-601 Violation of chapter. Any institution-affiliated party who wilfully violates any of the provisions of this chapter for which a penalty or administrative fine is not expressly provided herein shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-602 Copying records of Hawaii financial institutions. Any institution-affiliated party who knowingly copies without authorization any of the books, papers, records or documents belonging to or in the custody of a Hawaii financial institution, either for the party's own use or for the use of any other person other than in the ordinary and regular course of the party's duties, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-603 Disclosures of records of Hawaii financial institutions. Any institution-affiliated party who, without authorization, knowingly discloses, except in the regular course of business, any information derived from a Hawaii financial institution's records shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-604 Concealment. Any institution-affiliated party who knowingly conceals or endeavors to conceal any transaction of the Hawaii financial institution from any director, incorporator, officer, agent or employee of the institution or any official or employee of the division to whom it should be properly disclosed shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-605 Subpoena power. The commissioner shall have the power and authority to summon persons and subpoena witnesses, compel their attendance, require production of evidence, administer oaths and examine any person under oath in conducting any proceeding under this part. Any summons or subpoena may

be served by certified mail with return receipt requested. Powers granted under this section may be enforced by the circuit court.

§412:2-606 Witness; failure to testify or produce records. Any person who knowingly fails to attend and testify or answer any lawful inquiry or to produce books, papers, accounts, records, contracts, or documents, if in the person's power to do so, in obedience to the lawful subpoena or lawful requirements of the commissioner, or an examiner employed by the commissioner, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-607 Deception; false statements. (a) An institution-affiliated party who does any of the following shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640:

(1) With intent to deceive, makes any false or misleading statement or entry or omits any statement or entry required by law or rule to be made in any book, account, report or statement of the institution; or

(2) Knowingly obstructs or endeavors to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the division.

(b) Any person who intentionally or knowingly makes, circulates, or transmits to another or others any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any Hawaii financial institution that is a depository financial institution, or who knowingly counsels, aids, procures, or induces another to start, transmit or circulate such statement or rumor, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

(c) Any person who maliciously or for personal financial gain makes, circulates, or transmits to another or others any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any Hawaii financial institution that is a depository institution, or who maliciously or for personal financial gain counsels, aids, procures, or induces another to start, transmit or circulate any such statement or rumor, shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640.

§412:2-608 Misapplication of funds. Any institution-affiliated party who wilfully abstracts or misapplies any of the money, funds, credits, assets, or property of a Hawaii financial institution, whether owned by the financial institution or held for safekeeping or as agent, or held in trust shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640. However, if the amount abstracted or wilfully misapplied does not exceed $300, the institution-affiliated party shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-609 Imposition of administrative fines; assessment. (a) Any Hawaii financial institution which, and any institution-affiliated party who:

(1) Commits a material violation of any law or rule for which a penalty or fine is not expressly provided herein;

(2) Commits a material violation of any order issued by the commissioner which has become effective;

(3) Commits a material violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the financial institution; or

(4) Commits a material violation of any written agreement between the financial institution and the commissioner, may be ordered by the commissioner to forfeit and pay an administrative fine of not more than $1,000 for each day during which such violation continues.

(b) Notwithstanding subsection (a), any Hawaii financial institution which, and any institution-affiliated party who:

(1) Commits any violation described in any clause of subsection (a);

(2) Recklessly engages in an unsafe or unsound practice in conducting the affairs of the Hawaii financial institution; or

(3) Breaches any fiduciary duty owed to the financial institution;

which violation, practice or breach is:

(1) Part of a pattern of misconduct;

(2) Causes or is likely to cause more than a minimal loss to the Hawaii financial institution; or

(3) Results in pecuniary gain or other benefit to such party;

may be ordered by the commissioner to forfeit and pay an administrative fine of not more than $5,000 for each day during which the violation, practice, or breach continues.

(c) Notwithstanding subsections (a) and (b), any Hawaii financial institution which, and any institution-affiliated party who:

(1) Knowingly commits any violation described in any clause of subsection (a); knowingly engages in any unsafe or unsound practice in conducting the affairs of the Hawaii financial institution; or knowingly breaches any fiduciary duty owed to the financial institution; and

(2) Knowingly or recklessly causes a substantial loss to the Hawaii financial institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach;

may be ordered by the commissioner to forfeit and pay an administrative fine of not more than of[1] $100,000 for each day during which the violation, practice, or breach continues. The maximum administrative fine shall not exceed in the case of any person other than a Hawaii financial institution, the amount of $500,000 and in the case of any Hawaii financial institution, the lesser of $1,000,000 or one per cent of the total assets of the Hawaii financial institution.

(d) Any administrative fine imposed under subsections (a), (b), or (c) may be assessed and collected by the commissioner by service of written notice and order upon the Hawaii financial institution or institution-affiliated party. If, with respect to any such assessment, a hearing is not requested pursuant to section 412:2-610(c) within the period of time allowed under section 412:2-610(c), the assessment shall constitute a final and unappealable order.

§412-2:610 Compromise or modification of administrative fines; determining amount of fine; hearing. (a) The commissioner may compromise, modify or suspend any administrative fine which may be assessed or which has been assessed pursuant to section 412:2-609. The commissioner may also exempt violations of informal enforcement actions from the administrative fines and penalties set forth in section 412:2-609.

(b) In determining the amount of any administrative fine imposed under section 412:2-609, the commissioner shall take into account the appropriateness of the fine with respect to all of the following:

(1) The size of financial resources and good faith of the financial institution or the person charged;

(2) The gravity of the violation, practice, or breach;

(3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty owed to the financial institution;

(4) The extent to which a federal agency has, by imposing a fine for similar conduct, mitigated the need for imposition of a particular level of administrative fine under section 412:2-609; and

(5) Such other matters as justice may require.

(c) The Hawaii financial institution or other person against whom any administrative fine is assessed under this section shall be afforded a hearing in accordance with chapter 91 if the financial institution or person submits a written request for a hearing within twenty days after the service of the notice of assessment.

§412-2:611 Action to recover administrative fines; deposit to general fund. (a) If any Hawaii financial institution or institution-affiliated party fails to pay an assessment after any administrative fine assessed under this chapter has become final, the commissioner shall recover the amount assessed by action in circuit court, in which case the commissioner may request the court to award reasonable attorney's fees and costs.

(b) Unless otherwise provided by statute, all administrative fines collected under authority of this chapter shall be deposited in the general fund of the State.

ARTICLE 3. ORGANIZATION AND MANAGEMENT OF FINANCIAL INSTITUTIONS

PART I. GENERAL PROVISIONS

§412:3-100 Applicability of this part. This part shall apply to all Hawaii financial institutions.

§412:3-101 Name of financial institution. The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section 415-8(2) or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word "corporation", "incorporated", or "limited", or an abbreviation of one of the words.

§412:3-102 Change of name. To change its name, a Hawaii financial institution shall file an application with the commissioner and pay such fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter 415. Any change of name of a stock financial institution or mutual savings and loan association pursuant to this section shall be effected in accordance with chapter 415. Any change of name shall not affect a financial institution's rights, liabilities or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities or obligations; provided, however, that the commissioner may require notice to be given to the public and other governmental agencies.

§412:3-103 Amendments to articles and bylaws. Upon the adoption of any amendment to the articles of incorporation or association or to the bylaws of a Hawaii financial institution, the secretary or other authorized officer of the financial institution shall file a copy of the amended articles or bylaws with the commissioner, certifying that the copy is true and correct, the date the amendment was adopted and that the amendment was duly adopted in accordance with the applicable provisions of the articles and bylaws. The amended articles and bylaws shall be kept on file by the division.

§412:3-104 Qualifications of directors. Except for nondepository financial services loan companies, the board of directors of every Hawaii financial institution shall at all times consist of at least five directors, of whom at least three shall be residents of this State at the time of their election and while holding office. If any resident director ceases to be a resident of this State or ceases to be a director, and such circumstance causes the number of resident directors on the board to be fewer than three, another resident director shall be immediately elected or appointed in accordance with the institution's bylaws. The board of directors of any financial institution, which is a wholly owned subsidiary of a holding company incorporated in another state shall at all times consist of at least five directors, of whom at least one shall be a resident of this State at the time of election and while on the board.

§412:3-105 Election and appointment of executive officers. The directors of a Hawaii financial institution shall elect or appoint its executive officers. The directors may also appoint and employ all other necessary officers and agents, define their duties, fix their compensation, dismiss them, and require that they be bonded. Except for the election or appointment of executive officers, the board of directors may delegate to such officers the employment, discharge, fixing of compensation, bonding, and supervision of subordinate officers, employees and agents.

§412:3-106 Residency of chief executive officer. The chief executive officer of every Hawaii financial institution, except a nondepository financial services loan company, shall be a resident of this State. If at any time a person holding the office ceases to be a State resident, that person's tenure shall automatically cease, and a successor, alternate, or substitute who is a State resident shall be immediately appointed or elected, as provided in the institution's bylaws.

§412:3-107 Meetings of the board. Except for nondepository financial services loan companies, the board of directors of every Hawaii financial institution shall hold a regular meeting at least once every three months.

§412:3-108 Generally accepted accounting principles. Every Hawaii financial institution shall follow generally accepted accounting principles, except as otherwise prescribed by the appropriate federal regulatory agency.

§412:3-109 Charging down assets. The commissioner may require any asset on the books of a Hawaii financial institution to be charged down to such sum as represents its fair value.

§412:3-110 Holding of assets. Every Hawaii financial institution shall take the action necessary to assure the safekeeping of its assets, and to keep them separate and apart from the assets or property of others. An institution may use the services of a correspondent financial organization as a depository for securities owned or held as collateral, or a computer service organization for accounting, or the practice of nominee registration of title of securities.

§412:3-111 Maintenance of books and records. (a) Every Hawaii financial institution shall keep its books and records in a safe and secure place in this State. The commissioner may authorize such records to be maintained outside of this State.

(b) A computer service bureau or data processing service may be utilized to process data without obtaining the commissioner's authorization, provided that the final books and records are maintained in accordance with subsection (a).

(c) The books and records of the Hawaii financial institution may be maintained as originals or photocopies, on microfilm or microfiche, on computer disks or tapes, or similar forms, provided that they are readily accessible and may be easily examined.

(d) Records, statements or reports required or authorized by this chapter may be in a spoken language other than English provided that English translations are also maintained.

(e) No Hawaii financial institution shall be required to preserve or keep its records or files for a period longer than six years, except as specified in subsection (f).

(f) The following records or files of a Hawaii financial institution shall not be destroyed except in accordance with rules of the commissioner promulgated under chapter 91:

(1) Minute books of meetings of shareholders, directors, and executive committee;
(2) Capital stock ledger; and
(3) General ledgers and trust ledgers.

These records and files may be maintained in original form or in the form of a photographic, photostatic, microfilm, microcard, miniature photographic, or other reproduction by a durable medium for reproducing the original.

(g) No liability shall accrue against any Hawaii financial institution for its destruction of its records or files in accordance with this section or the rules adopted hereunder. A showing by the financial institution that its records or files have been destroyed in accordance with this section or rules adopted hereunder shall be sufficient excuse for the failure to produce them.

§412:3-112 Submissions to commissioner. (a) Every Hawaii financial institution shall at its own expense file the following written reports with the commissioner:

(1) An independent audit report of its financial statements as of the close of its fiscal year shall be filed by a Hawaii financial institution, other than a nondepository financial services loan company or credit union, within one hundred twenty days of the close of its fiscal year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days. For depository institutions, the report shall be conducted in accordance with the requirements of section 36 of the Federal Deposit Insurance Act (12 U.S.C. §183lm). For trust companies, the independent audit report shall contain audited financial statements prepared in accordance with generally accepted accounting principles and shall be based on an audit performed in accordance with generally accepted auditing standards, the independent auditor's report on the fair presentation of the financial statements and any qualification to the report, any management letter, and any other report. Hawaii financial institutions that are subsidiaries of a financial institution holding company may satisfy the requirements of this paragraph by filing an independent audit report of the financial institution holding company;
(2) Unaudited financial statements as of the following dates shall be filed by a Hawaii financial institution within thirty days of the date of the financial statement:
    (A) For a nondepository financial services loan company, trust company, or credit union the statements shall be filed as of June 30 and December 31 of each year.

(B) For a Hawaii financial institution, other than a nondepository financial services loan company, trust company, or credit union, the statements shall be filed as of March 31, June 30, September 30, and December 31 of each year.

The reports shall be in a form prescribed by the commissioner and prepared in accordance with section 412:3-108. In the alternative, the institution may file the Call Reports, Consolidated Reports of Condition and Reports of Income, or Thrift Financial Reports as of those dates which are submitted to the appropriate federal regulatory agency of the institution;

(3) A notice of any change in the office of the person who has primary responsibility for the operation and management of the financial institution shall be filed by a Hawaii financial institution within ten days of the change. The notice shall specify the name and address of such person, who shall be designated that institution's "chief executive officer"; and

(4) Any other reports and other information that the commissioner may require with respect to any financial institution at the times and in the form as the commissioner deems appropriate for the proper supervision and regulation of the institution.

Each report shall be signed by an officer authorized by the institution's board of directors to sign the report, and shall contain a declaration of the officer's authority and a statement that the report is true and correct.

(b) Each wholly-owned subsidiary of a Hawaii financial institution whose assets constitute ten per cent or more of the consolidated assets of the Hawaii financial institution shall also submit separate unaudited financial statements meeting the requirements of subsections (a)(2)(A) or (B) as applicable, whether or not the financial institution prepares a consolidated financial statement.

(c) If the commissioner determines that any report is inadequate, the report shall be returned to the financial institution, with directions to rectify the inadequacies within the time specified by the commissioner, which shall not be longer than thirty days.

(d) The commissioner may impose an administrative fine upon any financial institution failing to furnish any report or information as required under this section. The fine shall not exceed $1,000 for each day that the report is delinquent and shall be recovered pursuant to the provisions of section 412:2-609.

§412:3-113 Publication of financial statements. Unless extended by the commissioner, within ten days after submission to the commissioner of its June 30 and December 31 financial statements, every Hawaii financial institution, except a nondepository financial services loan company or credit union, shall publish its statement of assets and liabilities in a newspaper of general circulation in this State. The statement shall be in a form prescribed by the commissioner and shall be prepared in accordance with section 412:3-108.

§412:3-114 Duty to report illegal acts. A Hawaii financial institution shall immediately notify the commissioner in writing of any act of robbery, embezzlement, or fraud committed in connection with its affairs whenever the concerned act involves a sum in excess of $10,000.

§412:3-115 Access to safety deposit box. Unless otherwise provided for in the lease for a safety deposit box, access to the safety deposit box leased or rented to one or more persons may be permitted by a financial institution to any person leasing or renting the safety deposit box, including any person purporting to be the

personal representative, authorized agent, guardian, trustee or other fiduciary for the lessee or renter of the safety deposit box. The provisions of this section shall be applicable even though the name of the person appearing on the financial institution's records as the lessee or renter is modified by a qualifying or descriptive term such as agent or trustee or other word or phrase indicating that the person may not be the lessee or renter of the safety deposit box in their own right. No financial institution shall be liable for any damages or penalty for allowing or refusing access to or removal of the contents of the safety deposit box under the provisions of this section.

PART II. ORGANIZATION OF BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, TRUST COMPANIES AND DEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:3-200 Applicability of part. The provisions of this part shall govern the organization of Hawaii financial institutions that are banks, savings banks, savings and loan associations, trust companies, and depository financial services loan companies.

§412:3-201 Application for preliminary approval to organize financial institution. (a) Three, or more individuals, of whom at least three are residents of the State, or any company which seeks to become a financial institution holding company may file an application with the commissioner for preliminary approval to organize a Hawaii financial institution under this part. Banks seeking authority to engage in the trust business through a division or department of the bank, or through a subsidiary shall apply for such authority under section 412:5-205.

(b) The application shall contain the following information, unless waived by the commissioner:

(1) The proposed name of the financial institution, the location of its principal office, and any lease agreements for such principal office;
(2) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
(3) The name and address of each proposed subscriber of capital stock in the financial institution and if capital has not been fully raised, a proposed capital plan including a description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person;
(4) Proposed financial institution policies concerning loans, asset and liability management, conflicts of interest, investments, operations, and community reinvestment;
(5) The financial institution's business plan;
(6) Financial projections regarding the financial institution's profitability;
(7) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
(8) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
(9) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
(10) A description of any existing or proposed service corporation, affiliate, or subsidiary; and

(11) Any other information that the commissioner may require.

(c) The application shall be submitted in a form prescribed by the commissioner. The commissioner may accept application forms which are utilized by any federal regulatory agency in processing similar applications. The application shall be accompanied by an application fee of $9,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.

(d) The identity of each applicant and organizer, and any information which is not confidential shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter which the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

§412:3-202 Additional requirements for holding company. (a) An applicant for the organization of a Hawaii financial institution which will be a subsidiary of a holding company shall furnish the commissioner with the following additional information regarding the holding company, unless waived by the commissioner:

(1) If the holding company is a corporation, a certificate from the incorporating jurisdiction indicating that the corporation was properly organized under applicable corporate law, and that it is otherwise in good standing;

(2) Its existing and proposed affiliates and subsidiaries, and the extent and nature of its control over the operations of the proposed financial institution;

(3) Financial statements, employment history, education, management experience, and other biographical information for all of its executive officers and directors;

(4) The name and address of each shareholder or each proposed subscriber of capital stock, and if capital has not been fully raised, a proposed capital plan including a description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person;

(5) Evidence that it has or will have the financial ability, responsibility, and experience to engage in the business of a financial institution holding company; and

(6) Any other information that the commissioner may require.

(b) The commissioner may issue a preliminary decision regarding the qualifications of the holding company.

§412:3-203 Deferral of application requirements. For good cause, the commissioner may defer specific application requirements until the filing of an application for a charter or a license.

§412:3-204 Publication of notice. (a) Once the application to organize a Hawaii financial institution is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once a week for three successive weeks in a newspaper of general circulation in each county in this State where the

proposed financial institution intends to establish a principal office, branch or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the names of the applicant and organizers, the location of the financial institution's proposed place of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding.

§412:3-205 Informational and comment proceeding on application. (a) An informational and comment proceeding on the application shall not be mandatory and whether an informational and comment proceeding is held shall be within the commissioner's discretion, regardless of whether any person has requested one.

(b) If the commissioner determines that an informational and comment proceeding is warranted, the commissioner shall notify the applicant and every person who has requested an informational and comment proceeding of the time, date, and place of the proceeding at least ten days prior to the proceeding.

§412:3-206 Grant of preliminary approval to organize a financial institution. (a) Following the expiration of the time for the submission of written comments or the completion of an informational and comment proceeding, the commissioner shall issue a written decision and order on the application for preliminary approval to organize. If the commissioner approves the application, the applicant shall become an "applicant in organization," and may take all steps necessary to complete organization and file an application for a charter or license.

(b) An application for preliminary approval to organize shall be approved only if the commissioner finds that:

(1) The proposed activities of the financial institution will comply with the requirements of this chapter;

(2) If the financial institution will be a subsidiary of a holding company, the holding company is or will be properly organized, in good standing, and financially sound, and is not or will not be engaging directly or indirectly through any subsidiary or affiliate in business prohibited by this chapter;

(3) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the financial institution and any holding company are such as will warrant public confidence and a belief that the business of the financial institution will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such director, officer, or controlling person has:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or

(E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter; and

(4) The proposed operations of the financial institution will be conducted in a safe and sound manner.

(c) In granting preliminary approval to organize, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

§412:3-207 Denial of preliminary approval to organize. If the commissioner is not satisfied that the applicant meets all the criteria set forth for preliminary approval to organize, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant preliminary approval to organize may be appealed to the circuit court as provided in chapter 91.

§412:3-208 Approval of articles and bylaws. (a) Within sixty days after receiving preliminary approval to organize, the applicant in organization shall file with the commissioner the proposed articles of incorporation and bylaws of the Hawaii financial institution. Within sixty days thereafter, the commissioner shall deny, approve or issue a statement of no objection to the articles and bylaws.

(b) The articles of incorporation shall comply in all respects with chapter 415.

(c) If there has been no disapproval by the commissioner, the articles of incorporation may be delivered by the applicant in organization to the director of commerce and consumer affairs for filing, and if accepted for filing, the financial institution shall have corporate existence.

(d) Although the proposed financial institution may have corporate existence, it may not transact any financial institution business until it has received a financial institution charter or license under this article; provided that the financial institution may conduct any transaction that is incidental and necessary to prepare to do a financial institution business and obtain a charter or license.

§412:3-209 Paid-in capital and surplus. (a) Every financial institution existing or organized under the laws of this State shall at all times, and every applicant in organization shall before filing the final application for a charter or license under this part and at all times thereafter, have paid-in capital and surplus of not less than the following amounts for each type of institution specified below:

Banks	$5,000,000
Savings banks	$3,000,000

Savings and loan associations	$2,000,000
Trust companies	$1,500,000
Depository financial services loan companies	$1,000,000

(b) The initial paid-in capital and surplus of each financial institution shall be in money or in the form of such other property as may be authorized by the board of directors and approved in writing by the commissioner.

§412:3-210 Approval of capital stock solicitation. (a) The applicant in organization and the proposed Hawaii financial institution shall not solicit subscriptions for the capital stock of the Hawaii financial institution without written approval of the commissioner.

(b) An application under this section may be filed before or after the applicant's articles of incorporation and bylaws have been approved by the commissioner; provided that the applicant in organization and the proposed financial institution shall not solicit subscriptions for capital stock until the articles of incorporation and bylaws of the proposed financial institution shall have been approved by the commissioner. An applicant in organization seeking approval of a capital stock solicitation shall pay a fee established by the commissioner pursuant to section 412:2-105, and shall file an application which contains the following:

(1) Information regarding the solicitation plan by which the applicant in organization and the proposed financial institution proposes to conduct the solicitation of subscribers;
(2) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
(3) A specimen subscription contract or purchase agreement, suitability certificates and other related documents to be executed by subscribers;
(4) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
(5) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
(6) Proposed advertising materials;
(7) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
(8) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto;
(9) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto; and
(10) Any other information that the commissioner may require.

(c) Upon being satisfied that the application for approval of the capital stock solicitation is complete and that the solicitation will not affect the safety or soundness of the proposed financial institution or harm the public interest, the commissioner shall approve the application. The approval shall not constitute a determination that the applicant has complied with chapter 485 or any other State or federal law.

§412:3-211 Time limit to complete organization. (a) A proposed Hawaii financial institution shall obtain its required capital and surplus, complete its organization, and obtain a charter or license from the commissioner within one year from the date of incorporation; provided that for good cause shown by the applicant in organization, the commissioner may by written order extend the deadline for a period not to exceed six months.

(b) If the applicant in organization fails to meet the deadline set forth in subsection (a), the commissioner shall order the applicant in organization to dissolve the proposed Hawaii financial institution.

§412:3-212 Final application for charter or license. (a) After completing its organization of the Hawaii financial institution, the applicant in organization may file with the commissioner an application for a charter or license to engage in the business of a Hawaii financial institution. The application shall be in a form prescribed by the commissioner and, unless waived by the commissioner, shall contain the following information:

(1) A sworn statement by the applicant in organization that it has complied with all requirements of law concerning the organization of the proposed financial institution, including but not limited to the requirement that the full amount of its required capital and surplus has been paid in or deposited in escrow under terms satisfactory to the commissioner;

(2) The names and addresses of all common and preferred shareholders, and elected or appointed directors and executive officers of the proposed financial institution and any holding company of the financial institution, and the number of shares owned by each;

(3) A description of any material changes which have occurred in the financial institution's organizers or the applicant in organization, its business plan, and its financial condition since the issuance of the preliminary approval to organize, accompanied by updated financial statements of the financial institution, any holding company of the financial institution, the applicant in organization, and all executive officers and directors of the financial institution and any holding company of the financial institution;

(4) Evidence that all federal deposit insurance, fidelity bonds and any other insurance required by the order of preliminary approval have been obtained;

(5) A description of the financial institution's disaster recovery policies and programs, security programs, and all vending contractors for electronic data processing and servicing; and

(6) Any other information that the commissioner may require.

(b) The commissioner shall review the application, may conduct an examination of the financial institution, and may interview any proposed director or executive officer.

(c) If the commissioner is satisfied that the financial institution and, if applicable, its holding company have fulfilled all the requirements of law, the grounds for preliminary approval, and that the financial institution is qualified to engage in the business of a financial institution, the commissioner shall issue a written decision and order approving the application. The order may restrict the payment of dividends for a period of up to three years, and may contain any other conditions and restrictions on the financial institution that are in the public interest, including but not limited to the divestment of any contractual arrangement with an affiliate or subsidiary involving any type of business not permitted under this chapter. Upon approving the application and upon the payment by a depository

financial services loan company of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the financial institution a charter or license to engage in the business of a financial institution under this chapter.

§412:3-213 Denial of charter or license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval of the charter or license, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a charter or license may be appealed to the circuit court as provided in chapter 91.

PART III. ORGANIZATION OF NONDEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:3-300 Applicability of part. The provisions of this part shall govern the organization of nondepository financial services loan companies in this State.

§412:3-301 Application for license. (a) Any corporation incorporated in this State or any person intending to form a corporation incorporated in this State may file an application with the commissioner for a license to engage in the business of a nondepository financial services loan company.

(b) The application shall contain the following information, unless waived by the commissioner:

(1) The proposed name of the nondepository financial services loan company, the location of its principal office, and any lease agreements for such principal office;

(2) Any intended or existing affiliates, subsidiaries, and holding company of the proposed nondepository financial services loan company and the extent and nature of the holding company's control over the operations of the proposed nondepository financial services loan company;

(3) A business plan which shall contain the following:

(A) A written description of the company's proposed financial products;

(B) A written statement which explains how the scope of the proposed business complies with article 9 and why any existing lines of business do not conflict with the provisions of article 9;

(C) A written description of the company's proposed plan of marketing its products, whether through affiliates, subsidiaries, service corporations, or holding company;

(D) Financial projections regarding the nondepository financial services loan company's profitability; and

(E) Any and all contractual arrangements which are intended to be executed between the nondepository financial services loan company and its holding company, affiliates, and subsidiaries;

(4) Financial statements, employment history, education, management experience, and other biographical information for the proposed executive officers and directors of the nondepository financial services loan company and its holding company, if any;

(5) Proposed policies regarding loans, investments, operations, accounting, record-keeping and compliance with applicable federal and state consumer laws;

(6) The name and address of each proposed subscriber of capital stock in the nondepository financial services loan company or the majority shareholders in any holding company;
(7) A copy of the nondepository financial services loan company's articles of incorporation and bylaws; and
(8) Any other information that the commissioner may require.

(c) The application shall be submitted on a form prescribed by the commissioner. The application shall be accompanied by an application fee of $5,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.

(d) The identity of each applicant and organizer, and any information which is not confidential shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter which the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

§412:3-302 Publication of notice. (a) Once the application for a license is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once in a newspaper of general circulation in each county in this State where the nondepository financial services loan company intends to establish a principal office, branch or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the name of the applicant, the location of the nondepository financial services loan company's proposed place of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application and or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding.

§412:3-303 Informational and comment proceeding. (a) An informational and comment proceeding on the application shall not be mandatory and whether an informational and comment proceeding is held shall be within the commissioner's discretion, regardless of whether any person has requested one.

(b) If the commissioner determines that an informational and comment proceeding is warranted, the commissioner shall notify the applicant and every person who has requested an informational and comment proceeding of the time, date, and place of the proceeding at least ten days prior to the proceeding.

§412:3-304 Grant of approval. (a) An application for a license shall be approved only if the commissioner finds that:
(1) The proposed nondepository financial services loan company and holding company, if any, will comply with the requirements of this chapter; and

(2) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the nondepository financial services loan company are such as will warrant public confidence and a belief that the business of the nondepository financial services loan company will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such director, officer, or controlling person has:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or

(E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon approving the application and upon the payment of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.

(c) In granting approval, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

§412:3-305 Denial of license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a license may be appealed to the circuit court as provided in chapter 91.

§412:3-306 Paid-in capital and surplus. (a) Every nondepository financial services loan company existing or organized under the laws of this State shall at all times have paid-in capital and surplus of not less than $500,000.

(b) The initial paid-in capital and surplus of every nondepository financial services loan company shall be in money.

PART IV. MANAGEMENT OF STOCK FINANCIAL INSTITUTIONS

§412:3-400 Applicability of part. This part shall govern the management of all Hawaii financial institutions that are stock financial institutions.

§412:3-401 Applicability of Hawaii Business Corporation Act. (a) Except to the extent that the provisions of this chapter are inconsistent, all provisions of chapter 415 shall apply to a corporation engaging in business as a Hawaii financial institution under this chapter. In case of any inconsistencies, the provisions of this chapter shall control.

(b) A copy of each document delivered to the director of commerce and consumer affairs for filing pursuant to chapter 415 shall be simultaneously delivered to the commissioner.

§412:3-402 Capital stock. The following provisions shall apply to all shares of capital stock of a Hawaii stock financial institution:

(1) Subject to any restrictions in chapter 415 or the articles of incorporation, the consideration to be paid for the issuance of authorized capital stock of a Hawaii stock financial institution shall be authorized by the board of directors of the financial institution and shall be paid only in money or such other consideration as may be authorized by chapter 415 or this chapter, but not in labor or services actually performed for the financial institution; provided that upon authorization by the board of directors, the financial institution may issue its own authorized shares of capital stock in exchange for or in conversion of its outstanding shares, or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided, further, that no such issuance of shares of any class or series shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which a distribution is to be made.

(2) No Hawaii financial institution shall issue any share of its capital stock unless and until the full amount of any consideration therefor as authorized by the board of directors shall have been paid into or received by the financial institution.

(3) No Hawaii stock financial institution other than a nondepository financial services loan company shall issue preferred stock without first obtaining the written approval of the commissioner as to the amount and terms thereof. While any preferred stock of a financial institution is held as owner or pledgee by any federal agency or entity established by law for the purpose of providing financial assistance to financial institutions, such preferred stock and any dividends paid thereon shall be exempt from taxation by this State.

(4) No Hawaii stock financial institution other than a nondepository financial services loan company shall decrease its authorized capital stock or the par value of capital stock having par value, or decrease its outstanding capital stock by the acquisition of its own shares, without first receiving the written approval of the commissioner.

§412:3-403 Dividends and other capital distributions. (a) No Hawaii stock financial institution shall declare or pay any dividends or make any other

capital distribution to its shareholders except pursuant to its articles of incorporation, this section, and section 415-45; provided that if section 415-45 is inconsistent with this section, the provisions of this section shall control.

(b) In this section, "capital distribution" means:

(1) A distribution of cash or other property by any Hawaii stock financial institution to its owners made on account of that ownership, but excluding any dividends consisting only of shares of the capital stock of the financial institution or rights to purchase such shares;

(2) A payment by any stock financial institution to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interest, including any extensions of credit to finance an affiliated company's acquisition of those shares or interests; or

(3) A transaction that the commissioner determines, by order or rule, to be in substance a distribution of capital to the owners of the financial institution.

(c) A Hawaii stock financial institution shall not make any capital distribution in an amount greater than its retained earnings then on hand or if after such capital distribution the financial institution shall not have the minimum paid-in capital and surplus required by this chapter. For purposes of this section the amount of retained earnings on hand, capital and surplus shall be determined in accordance with generally accepted accounting principles, except that:

(1) All loans and extensions of credit on which interest has been delinquent for one year or more, or upon which a final judgment has been unsatisfied for more than one year and interest has been delinquent for one year or more, unless and to the extent the same are well secured or in the process of collection shall have been charged down;

(2) All assets which the commissioner may have required to be charged down pursuant to section 412:3-109, shall have been charged down; and

(3) Any loss sustained or charge made by a Hawaii financial institution as provided in this subsection shall be netted first against any reserve established therefor, then charged to retained earnings, then to surplus, and then to capital.

(d) Before making any capital distribution, each Hawaii stock financial institution, except for a nondepository financial services loan company, shall, until its capital and surplus equal at least one hundred thirty-three per cent of its initial minimum capital and surplus required under section 412:3-209, transfer to surplus from its retained earnings at least twenty-five per cent of its net profits from the preceding fiscal year.

PART V. PLACES OF BUSINESS

§412:3-500 Prohibition of business at unauthorized locations. Except as expressly authorized by this chapter or by federal law, no financial institution shall conduct any business in this State except at places of business or in the manner authorized in this part and except to the extent so authorized.

§412:3-501 Authorized places of business. (a) A Hawaii financial institution may conduct business at one or more of the following places of business, to the extent authorized:

(1) The principal office of a Hawaii financial institution is the place of business that it designates as its executive headquarters in this State. A financial institution may, but need not, conduct other businesses permitted under its charter or license at its principal office. The terms

"principal office," "home office," and "main office" are interchangeable.

(2) A branch is a place of business open to the public where a financial institution shall be authorized to conduct all businesses permitted under its charter or license, except for the maintenance of its executive headquarters.

(3) An agency is a place of business open to the public where a financial institution may conduct only specific businesses approved by the commissioner in writing.

(4) An automatic teller machine or ATM is a place of business, either at a fixed location or mobile, consisting of an on-line or off-line, manned or unmanned, electronic processing device, including associated equipment and structures, that is situated at a premises separate from a financial institution's principle office, branch, agency, or support facility, at which deposits of cash or instruments, or cash disbursement transactions between a person and one or more financial institutions are accomplished, whether instantaneous or otherwise, through or by means of electronic or automated signals or impulses including the human voice; provided that it shall not mean a telephone or an electronic processing device situated at or within the premises of a bank customer that is used only for transactions between that customer and the financial institution. The term does not include merchant operated terminals and point of sale terminals.

(5) A support facility is a place of business that is not generally open to the public, where a financial institution conducts limited types of significant business operations of the financial institution, including but not limited to data processing, clerical activities and storage.

(b) In addition to conducting business at a place of business described in subsection (a), a Hawaii financial institution may conduct business in any other manner or place necessary or convenient; provided that deposits of cash or instruments shall not be received, checks, negotiable orders of withdrawal or share drafts shall not be paid, and cash shall not be disbursed, except at an authorized principal office, branch or ATM or at any agency or support facility which has been authorized by the commissioner to accept deposits or disburse cash.

§412:3-502 Foreign financial institution. No foreign financial institution shall receive deposits, lend money, or pay checks, negotiable orders of withdrawal or share drafts from any principal office, branch, agency, ATM, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided, that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an ATM network or from operating from any location in this State as a mortgage broker licensed under chapter 454, or as a real estate collection servicing agent registered under chapter 454D.

§412:3-503 Opening or relocating principal office, branch, or agency. (a) No Hawaii financial institution may relocate its principal office to another location in this State, or open or relocate any branch or agency within or outside of this State without the commissioner's prior written approval; provided, that approval shall not be required if the relocation will be less than one mile from the institution's present place of business, the institution gives the commissioner written notice at least twenty days prior to the move, the type of business carried on at the new place of business will be the same as at the present place of business, and there

will be no financial involvement in the relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.

(b) The institution shall file an application with the commissioner. The application shall be in a form prescribed by the commissioner and shall be accompanied by a fee the amount of which shall be established by rule. The application shall contain the following information:

(1) The name of the financial institution;
(2) The specific location of the proposed site of the principal office, branch or agency;
(3) The anticipated opening date and, if open for a specified period, the end of such period;
(4) The nature of the business or transactions intended to be carried on at the location;
(5) Facts showing the necessity or justification for the proposed site and that there is a reasonable assurance of sufficient volume of business so that opening and maintaining the proposed business location will not jeopardize the solvency of the financial institution; and
(6) Any other information that the commissioner may require.

(c) If after appropriate examination and investigation, the commissioner is satisfied that the proposed opening or relocation is justified and proper, the commissioner shall approve the application in writing, with any conditions as the commissioner deems appropriate. Upon payment by a financial services loan company of the initial license fee for the new branch or agency, or the reissuance of license fee for the relocated office as established by rule pursuant to chapter 91, the commissioner shall issue a license for the new or relocated office.

§412:3-504 Notice and deadline for opening or relocating principal office, branch, or agency. Every financial institution permitted under this part to open or relocate a principal office, branch, or agency shall notify the commissioner in writing that the opening or relocation has been completed, no later than five days after the opening or relocation. If the opening or relocation will not be completed within nine months after the opening date stated in the application, the financial institution may obtain from the commissioner an extension of the time to open or relocate, which shall be reasonably granted for good cause. If an extension of time to open or relocate is not obtained in writing, the commissioner may revoke the permission to open or relocate.

§412:3-505 Opening or relocating out-of-state branch or agency. With the commissioner's prior written approval, a Hawaii financial institution may open or relocate a branch or agency that is outside of this State, including but not limited to any state, possession, or territory of the United States or any foreign country. An application to open or relocate an out-of-state branch or agency shall be filed in accordance with section 412:3-503, and the commissioner may assess the financial institution any additional expenses as may be reasonably necessary to consider the application.

§412:3-506 Opening or relocating automatic teller machine or support facility. A Hawaii financial institution which opens or relocates an ATM or support facility shall within thirty days thereafter submit a letter to the commissioner containing the following information:

(1) The location of the ATM or support facility;
(2) A description of the type of functions which the ATM or support facility will perform; and
(3) The date or anticipated date of opening or relocation.

§412:3-507 Closing branch or agency. A Hawaii financial institution shall give the commissioner prior notice of its intent to close any branch or agency at least thirty days prior to the closing. The notice shall specify the intended date of closing, the reasons for the closing, and a certification by the secretary or other authorized officer of the institution that the decision to close was duly approved by its board of directors. This notice may be satisfied by delivery to the commissioner of a copy of any notice pertaining to the closure given to the financial institution's appropriate federal regulatory agency.

§412:3-508 Closing automatic teller machine or support facility. A Hawaii financial institution shall provide notice to the commissioner of its closure of an ATM or support facility within thirty days of the closing. The notice shall contain the location of the ATM or support facility closed and the date of closing.

§412:3-509 Out-of-state branch or agency. A Hawaii financial institution maintaining a branch or agency outside of this State shall be subject to the following requirements:

(1) The accounts of each out-of-state branch or agency of the financial institution shall be maintained independently of the accounts of all its other out-of-state branches or agencies, and independently of its offices, branches, and agencies in this State. At the end of every quarter of its fiscal year the financial institution shall transfer to its general ledger at its principal office the profit and loss from each out-of-state branch or agency as separate items;

(2) The commissioner may at any time conduct examinations of any out-of-state branch or agency and may at any time order its discontinuance for the same reasons as a branch or agency within the State may be ordered to be discontinued. The financial institution maintaining the out-of-state branch or agency shall pay for the cost of all examinations, as provided in section 412:2-105; and

(3) A financial institution may act as the fiscal agent of the United States through any of its out-of-state branches or agencies.

PART VI. CONVERSIONS, MERGERS, CONSOLIDATIONS, ACQUISITIONS, ASSUMPTIONS, AND VOLUNTARY DISSOLUTIONS

§412:3-600 Applicability of this part. This part applies to:

(1) The conversion, merger, consolidation, acquisition of the assets or assumption of the liabilities, acquisition of control, or voluntary cessation of business and dissolution of a Hawaii financial institution;

(2) The merger, consolidation or acquisition of control of a financial institution holding company which controls:
   (A) A Hawaii financial institution; and
   (B) To the extent permitted by federal law, a federal financial institution whose operations are principally conducted in this State; and

(3) All persons who seek to merge or consolidate with, acquire the assets or assume the liabilities of, or acquire control of:
   (A) A Hawaii financial institution;
   (B) A financial institution holding company which controls a Hawaii financial institution; and
   (C) To the extent permitted by federal law, a financial institution holding company which controls a federal financial institution whose operations are principally conducted in this State.

§412:3-601 No conversions, mergers, consolidations, acquisitions, assumptions or voluntary dissolutions except pursuant to this part. Except as modified by the commissioner's powers under parts III, IV and V of article 2, no Hawaii financial institution or financial institution holding company may undergo a conversion, merger or consolidation, sell all or substantially all of its assets, be subject to any assumption of any of its liabilities or to an acquisition of control, or cease business and dissolve except in accordance with this part.

§412:3-602 Definitions. As used in this part:

"Participating institution" means one or all of the financial institutions (or, where applicable, financial institution holding companies) participating in a merger or consolidation pursuant to this part.

"Resulting institution" means the financial institution resulting from a merger, consolidation or conversion pursuant to this part.

§412:3-603 Procedure for applications pursuant to this part. Whenever the written approval of the commissioner is required with respect to any transaction covered by this part, the following procedures shall apply:

(1) An application for approval by the commissioner pursuant to this part shall be on a form prescribed by the commissioner and shall contain any information, data and records as the commissioner may require. As far as possible consistent with the effective discharge of the commissioner's responsibilities, the commissioner shall prescribe the use of forms currently prescribed by the appropriate federal regulatory agency of financial institutions and financial institution holding companies for identical or similar types of transactions. The application shall be accompanied by an application fee established by the commissioner pursuant to section 412:2-105. The application fee shall not be refundable;

(2) If any material change occurs in the facts set forth in an application, or if for any other reason the applicant desires to amend the application, an amendment setting forth any change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner. Within twenty days after receiving an application or any amendment thereto, the commissioner may request any additional information necessary in deciding whether to approve a proposed transaction pursuant to this part. The applicant shall submit the additional information in a reasonable time thereafter, as may be specified by the commissioner;

(3) If the commissioner would approve a plan of conversion, merger or consolidation, an acquisition of assets or assumption of liabilities, an acquisition of control, or a voluntary cessation of business and dissolution, but on terms different than contained in the application, the commissioner may give notice to the applicant of the nature of the changes which would be approved, and the applicant may submit an amended application;

(4) If the commissioner intends to disapprove an application, the commissioner shall deliver to the applicant a written notice of the intent to disapprove. Within ten days after receipt of the commissioner's notice of intent to disapprove an application, the applicant may request an administrative hearing, to be held in accordance with chapter 91. If no request for a hearing is made, the commissioner's disapproval shall become final. If after the hearing the commissioner finally disapproves

the application, the applicant may, within thirty days of the date of the final decision, appeal to the circuit court as provided in chapter 91;

(5) Notwithstanding any other provision of this part, any complete application which is not approved or denied by the commissioner within a period of sixty days after the application is filed with the commissioner or, if the applicant consents to an extension of the period within which the commissioner may act, within the extended period, shall be deemed to be approved by the commissioner as of the first day after the period of sixty days or the extended period. If the commissioner gives notice of an informational and comment proceeding on the application, the sixty day period shall be extended to a date as may be fixed by order of the commissioner. For purposes of this section, an application is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all of the information in the form required by the commissioner, is received and accepted by the commissioner;

(6) Any applicant submitting information to the commissioner pursuant to this part may request that the information, or any part thereof, be kept confidential. The request shall be made in writing and shall set forth the specific items sought to be kept confidential and the reasons and authority for the confidential treatment. The commissioner may, pursuant to a request or otherwise, determine that good cause exists to keep some or all of the information confidential, and shall keep the information confidential and not subject to public disclosure. In connection with an application for the acquisition of control pursuant to section 412:3-612, the commissioner may release information to the affected financial institution or financial institution holding company with a directive that some or all of the information be kept confidential.

§412:3-604 Shareholder or member vote. (a) For any transaction covered by this part which requires approval of the shareholders or members of the financial institution, the voting requirements shall be:

(1) If a Hawaii financial institution is a stock institution, the holders of two-thirds of each class of the issued and outstanding capital stock of the financial institution entitled to vote or such greater majority as may be provided by the articles of incorporation of the Hawaii financial institution shall be required to approve any action under this part;

(2) If a Hawaii financial institution is a mutual savings and loan association, a majority of members present in person or by proxy at any meeting shall be required to approve any action under this part;

(3) If a Hawaii financial institution is a credit union, a majority of members present in person at any meeting shall be required to approve any action under this part.

(b) This section shall control over the required percentages for any shareholder vote contained in section 415-73 on approval by shareholders of a merger or consolidation, section 415-79 on approval by shareholders on the sale of assets not in the usual and regular course of business, and section 415-84 on approval by shareholders on the voluntary dissolution of a corporation.

§412:3-605 Notice to mutual savings and loan or credit union member; no right of dissent. (a) Wherever the approval of a transaction is required by this part by the members of a mutual savings and loan association or a credit union, notice of a fleeting of its members, which may be an annual or a special fleeting,

shall be given to each member entitled to vote. The notice shall be provided not less than twenty days before the date of the meeting. The notice shall state that the purpose of the meeting is to vote upon a transaction covered by this part and shall be accompanied by a detailed description of the proposed transaction or a summary of the transaction and a copy of the plan of conversion, merger, consolidation, sale of assets or assumption of liabilities, or voluntary cessation of business and dissolution approved by the board of directors.

(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter 415 for any of the transactions governed by this part.

§412:3-606 Conversion from State to comparable federal financial institution. (a) A Hawaii financial institution may convert to a comparable federal financial institution if the conversion is approved at a meeting of its shareholders or members duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(b) Within ten days after the meeting of its shareholders or members approving the conversion, the financial institution shall file with the commissioner:

(1) A notice of intention to convert; and

(2) A certificate signed by two executive officers of the financial institution verifying the validity of the meeting, that the required vote was obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct.

(c) Within a reasonably prompt time and without any unnecessary delay after the meeting approving the conversion, the financial institution shall take the action necessary to complete the conversion and to obtain a federal license, charter, certificate, or other approval to become a federal financial institution.

(d) The date of issuance of the federal license, charter, certificate, or other approval, or the effective date of conversion stated in the license, charter, certificate or other approval, shall be the effective date of the conversion.

(e) Upon the effective date of the conversion as determined under federal law, the institution's State charter or license shall terminate without further notice, and the institution shall cease to be regulated by the commissioner. Within ten days after receipt of the federal charter, license, certificate, or other approval, the resulting financial institution shall deliver a copy thereof to the commissioner.

§412:3-607 Conversion from federal to comparable Hawaii financial institution. (a) A federal financial institution whose operations are principally conducted in this State may convert to a comparable Hawaii financial institution if the institution, and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by federal law with respect to the conversion, subject to any rights of dissenting shareholders or members and to obtaining a charter under this chapter.

(b) The federal financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter to engage in business as a comparable Hawaii financial institution pursuant to this chapter. The application shall be accompanied by:

(1) A certificate signed by two executive officers of the financial institution, verifying that it has complied with all federal laws and regulations relating to the conversion;

(2) The information required from applicants for approval to organize a Hawaii financial institution of the same type; and

(3) Any other information that the commissioner may require.

(c) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to sections 412:2-105.

(d) The charter shall be granted only if the commissioner is satisfied that the granting of the charter will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, and the character of its executive officers and directors. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(e) The conversion shall be effective upon the effective date of the new charter granted by the commissioner after all provisions of this section and applicable federal law have been complied with in full.

§412:3-608 Conversion to another type of financial institution. (a) A financial institution of any type, whether federal or State, may convert to a Hawaii financial institution of any other type if the institution and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by this part and by federal law, if applicable.

(b) If the converting institution is a Hawaii financial institution, its shareholders or members shall approve a conversion to another type of financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(c) The financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter or license to engage in the business of the type of financial institution to which it will convert. The application shall be accompanied by:

(1) A certificate signed by two executive officers of the financial institution, verifying the validity of the meeting of the shareholder or members, that the requisite vote has been obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct, or that the applicant has complied with all federal laws and regulations regarding the conversion, as the case may be;
(2) The information required from applicants for approval to organize a Hawaii financial institution of the type into which it will convert; and
(3) Any other information that the commissioner may require.

(d) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, and the character of its executive officers and directors. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) The conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full.

(g) Nothing in this section shall be construed as permitting the conversion of any financial institution to a state-chartered mutual savings and loan association.

§412:3-609 Merger or consolidation of Hawaii financial institutions. (a) Any one or more financial institutions may merge into another financial institution and any two or more financial institutions other than credit unions may consolidate into a new financial institution if the institutions shall have complied with all requirements, conditions, and limitations imposed by this chapter and by federal law, if applicable. A merger or consolidation in which one or more of the participating financial institutions is a financial institution chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country shall be authorized only in accordance with subsection (d), or in accordance with part IV of article 5 of this chapter.

(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter 415; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604, and that if the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country and one or more Hawaii financial institutions may be merged or consolidated, but only where the financial institution resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State or is a federal financial institution which conducts its operations principally in this State. The financial institution chartered or licensed under the laws of any state other than Hawaii, any possession or territory of the United States or any foreign country shall comply with all requirements, conditions and limitations imposed by the law of the jurisdiction under which the financial institution is chartered with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the

requirements of section 412:3-604, and that the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter 415, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.

(f) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter 415, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.

(g) Prior to or after the vote of the shareholders or members upon the plan of merger or consolidation, but prior to delivery of articles of merger or consolidation and plan of merger or consolidation to the director of commerce and consumer affairs, the participating financial institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

(1) The plan of merger or consolidation;

(2) A certificate signed by two executive officers of each of the participating institutions, verifying that the plan of merger or consolidation has been approved by the board of directors of the participating financial institution and that the attached copy of the resolution approving the proposed merger or consolidation is true and correct;

(3) If any participating financial institution is a federal financial institution or a financial institution chartered under the laws of any state other than Hawaii, any possession or territory of the United States, or any foreign country, a certificate signed by two executive officers verifying that the financial institution has complied, or will comply with all federal laws and regulations or all laws and regulations of the jurisdiction under which it is chartered relating to the merger or consolidation;

(4) If the resulting financial institution is to be a Hawaii financial institution, the information required from applicants for approval to organize a Hawaii financial institution of the same type as the proposed resulting Hawaii financial institution;

(5) If a Hawaii financial institution is seeking to merge or consolidate with a financial institution of another type, the information required

from applicants for approval to convert to another type of financial institution; and

(6) Any other information that the commissioner may require.

(h) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(i) The commissioner shall approve the plan of merger or consolidation if it appears that:

(1) Any resulting Hawaii financial institution would meet all the requirements under this chapter for a charter or license to the same extent that it would if it were applying for a new charter or license;

(2) Any resulting financial institution would be adequately capitalized;

(3) The plan of merger or consolidation is fair to creditors and the shareholders or members of all participating institutions;

(4) The participating institutions have complied, or will comply, with all requirements, conditions, and limitations imposed by federal law or regulation or by the law or regulation of the jurisdiction under which an institution is chartered with respect to the merger or consolidation;

(5) The overall experience, moral character or integrity of the proposed directors and executive officers of the resulting institution is consistent with the interest of the depositors, beneficiaries, creditors, shareholders or members of the financial institution, or in the public interest;

(6) The merger or consolidation will not jeopardize the safety or soundness of any participating institutions or the resulting institution, and is not otherwise contrary to the public interest;

(7) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anticompetitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;

(8) The merger or consolidation will promote the convenience, needs and advantage of the general public particularly in the communities in which the participating and resulting financial institutions conduct or will conduct its business;

(9) The grounds for approval of a conversion to another type of financial institution pursuant to section 412:3-608 have been met in the case of a participating Hawaii financial institution seeking to merge or consolidate with a financial institution of a different type; and

(10) The plan meets any other criteria as the commissioner may deem appropriate.

(j) In the case of a merger, the charter or license of the participating institution which is the resulting institution shall continue as the charter or license of the resulting institution upon the effective date of the merger. In the case of a consolidation, when the commissioner is satisfied that the participating institutions have complied with all State and federal law with regard to the consolidation, the commissioner shall issue a charter or license to the consolidated resulting Hawaii financial institution.

§412:3-610 Effect of conversion, merger, or consolidation. (a) A Hawaii financial institution or federal financial institution resulting from a conversion, merger, or consolidation pursuant to this part continues the corporate entities of

each converting or participating institution and shall be deemed to be continuing the same business of each converting or participating institution carried on prior to the conversion, merger, or consolidation with all of the property, rights, powers, and duties of each converting or participating institution, except as affected by the law of this State in the case of a resulting Hawaii financial institution or by federal law in the case of a resulting federal financial institution, and by the articles of incorporation, charter, and bylaws of the resulting institution. No assignment, deed, conveyance, or other instrument of transfer need be executed in order for the resulting institution to maintain the title, rights, and powers held by the converting or participating institutions. The rights of any creditor or obligee of a converting or participating institution prior to any conversion, merger, or consolidation shall not be affected by such conversion, merger, or consolidation.

(b) A resulting institution shall have the right to the use the names of the converting or participating institutions for all legal purposes, including the recordation and filing of documents pursuant to chapters 501 and 502, whenever it can do any act under that name more conveniently. Any reference to a converting or participating institution in any writing, whether executed or taking effect before or after the conversion, merger, or consolidation, shall be deemed a reference to the resulting institution if not inconsistent with the other provisions of the writing. Provided, however, that the resulting institution shall not use a name in its signage, advertising, or other promotional materials in a manner that suggests or might tend to lead others into believing that it is a different type of financial institution.

(c) Except to the extent inconsistent with this part or in contravention of federal law, section 415-76 shall be applicable to any merger or consolidation under this part.

(d) If a converting or participating institution is a trust company or a bank which is authorized to do a trust business, the resulting institution, by operation of law and without further court order, transfer, substitution, act, or deed shall succeed to the rights, properties, assets, investments, deposits, demands, agreements, and trusts of the converting or participating institutions under all trusts, personal representations, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities as though the resulting institution had originally assumed the same and shall succeed to and be entitled to take and execute the appointment to all trusteeships, personal representations, executorships, guardianships, and other fiduciary and representative capacities to which the converting or participating institution may be named or is thereafter named in wills, whether probated before or after the conversion, merger or consolidation, or to which it is or may be named or appointed by any other instrument.

§412:3-611 Merger or consolidation of financial institution holding companies. (a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection (c), no financial institution holding company shall merge or consolidate with any other corporation if the effect of the merger or consolidation shall be to change the direct or indirect control of any Hawaii financial institution.

(b) The merger or consolidation shall be effected pursuant to the procedures, conditions and requirements for, and with the effect of, the merger or consolidation of corporations under the applicable laws of the state or states involved.

(c) Unless the requirement for an application is waived by the commissioner, the participating institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

(1) A certificate signed by two executive officers of each of the participating institutions, verifying that the participating institution has complied, or will comply with all state laws and rules relating to the merger or consolidation;

(2) Information of the type required to be provided pursuant to section 412:3-612, with respect to both of the participating institutions and their respective subsidiary financial institutions; and

(3) Any other information that the commissioner may require.

(d) The commissioner shall approve the merger or consolidation if it appears that:

(1) The resulting financial institution holding company would be adequately capitalized;

(2) The participating institutions have complied, or will comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation;

(3) The overall experience, moral character or integrity of the proposed directors and executive officers of the resulting financial institution holding company is consistent with the interest of the depositors, beneficiaries, creditors, or shareholders of the financial institution holding company and its subsidiaries, or in the public interest;

(4) The merger or consolidation will not jeopardize the safety or soundness of the subsidiary financial institutions of the participating institutions, and is not otherwise contrary to the public interest;

(5) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anticompetitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;

(6) The merger or consolidation will promote the convenience, needs and advantage of the general public particularly in the community in which the affected institution conducts its business; and

(7) The merger or consolidation meets any other criteria as the commissioner may deem appropriate.

(e) The commissioner may waive the requirement for approval of a merger or consolidation of a financial institution holding company which indirectly controls a nondepository financial services loan company, provided that publication in a form approved by the commissioner is made. The publication shall state the fact that a merger or consolidation will take place and shall describe the effect, if any, on the operations and employees of the nondepository financial services loan company. Publication shall be made once in a newspaper of general circulation.

§412:3-612 Acquisition of control of financial institution or financial institution holding company. (a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection (g):

(1) A person who is not already in control of a Hawaii financial institution or financial institution holding company shall not acquire control of that financial institution or that financial institution holding company, directly or indirectly, individually or in concert with another; and

(2) A person who is not already in control of a Hawaii financial institution or financial institution holding company shall not, directly or indirectly, make a tender offer for, request or invite a tender offer for, or offer to exchange securities for, any voting security or any security

convertible into a voting security of that financial institution or that financial institution holding company if the transaction would result in the person acquiring control of that Hawaii financial institution or that financial institution holding company; provided that nothing in this section shall prohibit a person from negotiating or entering into agreements subject to the condition that the acquisition of control will not be effective until approval is obtained.

(b) Notwithstanding subsection (a), this section shall not apply to any acquisition of control of a Hawaii financial institution or financial institution holding company:

(1) That has been placed into receivership or conservatorship, or whose acquisition has been wholly or partially initiated or approved for purposes of supervisory assistance from the commissioner or any other State or federal agency;

(2) By a donee or distributee of a gift or devise, if the gift or devise is not intended to avoid this section and provided that the donee or distributee within thirty days after the acquisition gives the commissioner written notice of the gift or devise and any other information that the commissioner may require;

(3) If the acquisition of control is the subject of an application for approval by the commissioner pursuant to section 412:3-609, 412:3-611, or 412:3-613;

(4) The acquisition of additional shares by a person who either on the effective date of this chapter or the date of compliance with the procedures of this section, and continuously after that date held, directly or indirectly, solely or through another person or transaction, or in concert with another, power to vote twenty-five per cent or more of the voting shares of the Hawaii financial institution or financial institution holding company; or

(5) The acquisition of additional shares by a person who on the effective date of this chapter and continuously thereafter held, directly or indirectly, solely or through another person or transaction, or in concert with another, power to vote ten per cent or more of the voting shares of the Hawaii financial institution or financial institution holding company, if the transaction will not result in the person's direct or indirect ownership or power to vote twenty-five per cent or more of any class of voting securities of the Hawaii financial institution or financial institution holding company or if the commissioner determines that such person has controlled the Hawaii financial institution or financial institution holding company since the effective date of this chapter.

(c) Unless the requirement for an application is waived by the commissioner, the proposed acquirer shall file an application with the commissioner pursuant to section 412:3-603 for approval to acquire control of the Hawaii financial institution or financial institution holding company. The application shall contain:

(1) Information regarding the proposed acquirer;

(2) Details concerning the acquisition; and

(3) Any other information that the commissioner may require.

(d) After receiving the proposed acquirer's application for approval and any amendments or supplements thereto, the commissioner shall promptly forward a copy of the same to the affected financial institution. The affected institution shall have ten days after receipt of the application and any amendments or supplements thereto within which to submit any relevant information to the commissioner

regarding the proposed acquisition, and shall be entitled to appear and be heard at any informational and comment proceeding on the application.

(e) The commissioner may disapprove the proposed acquisition of control if it appears that:

(1) The overall experience, moral character or integrity of any person who would acquire control of a Hawaii financial institution or financial institution holding company or become a financial institution holding company indicates that it would not be in the interest of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company, or in the public interest, to permit the person to control the Hawaii financial institution or the financial institution holding company or to become a financial institution holding company;

(2) The acquisition will not promote the convenience, needs, and advantage of the general public, particularly in the community in which the affected institution conducts its business;

(3) The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, and that these anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(4) The financial condition of any person who would acquire control of a Hawaii financial institution or a financial institution holding company or become a financial institution holding company may jeopardize the safety and soundness of the Hawaii financial institution or the financial institution holding company or prejudice the interests of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company;

(5) Any plan or proposal to liquidate, merge or consolidate, or make any other major change in the business, corporate structure, or management of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries is not fair and reasonable to the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries; or

(6) The acquiring person has failed or refused to furnish information requested by the commissioner.

(f) As a condition for approving the proposed acquisition of control, the commissioner shall impose a reasonable time period, not to exceed one year, within which the acquisition of control must occur.

(g) The commissioner may waive the requirement for approval of an acquisition of control of a financial institution holding company which indirectly controls a nondepository financial services loan company, provided that publication in a form approved by the commissioner is made. The publication shall state the fact that a change of control will take place and shall describe the effect, if any, on the operations and employees of the nondepository financial services loan company. Publication shall be made once in a newspaper of general circulation.

§412:3-613 Acquisition of assets and assumption of liabilities. (a) No Hawaii financial institution may sell, exchange or otherwise dispose of all or substantially all of the financial institution's assets or business, or all or substantially all of the business of any of its branches, or, if not in the usual and regular course of business, all or substantially all of the assets or business of any of its

departments, or may cause or permit the assumption of all or substantially all its liabilities, or any of its deposits, unless the commissioner shall have given prior written approval to the acquisition or assumption, and only if the acquisition or assumption complies with this part.

(b) Each acquisition or assumption subject to this section shall be effected pursuant to the procedures, conditions and requirements of chapter 415 applicable to, the sale of assets other than in the regular course of business; provided that the acquisition or assumption shall be approved by the shareholders or members of the transferring financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604. Notwithstanding the foregoing, the approval of the shareholders or members of the transferring institution shall not be required if the acquisition of all or substantially all of the assets or business, or the assumption of liabilities or deposits, of any of the transferring financial institution's departments or branches does not constitute an acquisition of all or substantially all of the assets or business, or assumption of all or substantially all of the liabilities or deposits, of the transferring financial institution.

(c) The participants in the transaction shall jointly file an application with the commissioner pursuant to section 412:3-603 for approval of the plan of acquisition or assumption. The application shall contain:

(1) The plan of acquisition or assumption which shall include, but not be limited to, the names and types of participants involved, the material terms of the transaction, and the provisions as to the manner in which the participants in the transaction will comply with all applicable federal and State law;

(2) A certificate signed by two executive officers of each of the participants in the transaction verifying that the attached copy of the resolution approving the plan of acquisition or assumption adopted by the board of directors of each of the participants in the transaction is true and correct; and

(3) Any other information that the commissioner may require.

(d) The commissioner may require notice to be given to the public as may seem appropriate.

(e) The commissioner shall approve the acquisition or assumption if it appears that:

(1) The depositors, beneficiaries, creditors, shareholders, or members, and other persons having any interest in the transferring financial institution will be adequately protected under the plan of acquisition or assumption;

(2) The amount paid for the acquisition or assumption was determined at arm's length, and does not appear to be fraudulent;

(3) The plan of acquisition or assumption does not adversely affect the stability of the acquiring or assuming participant if the participant is a Hawaii financial institution, and if the sale is part of the liquidation of the transferring financial institution, provides for the orderly dissolution of the transferring institution in a manner consistent with law;

(4) If one or more of the participants in the transaction is subject to federal regulation, the participants will comply with all applicable federal laws;

(5) The overall experience, moral character or integrity of the directors and executive officers of the acquiring or assuming participant is consistent with the interest of the depositors, beneficiaries, creditors, or shareholders of the acquiring or assuming participant, or in the public interest;

(6) The acquisition or assumption will not jeopardize the safety or soundness of any Hawaii financial institution which is a participant in the transaction, and is not otherwise contrary to the public interest;

(7) The proposed acquisition or assumption will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any of these anti-competitive effects are clearly outweighed in the public interest by the probable effect of the acquisition or assumption in meeting the convenience and needs of the community to be served; and

(8) The plan of acquisition or assumption meets such other criteria as the commissioner may deem appropriate.

(f) Upon any required approval by the shareholders or members of the transferring financial institution, two executive officers of the institution shall deliver to the commissioner a certificate that the sale or assumption was duly approved by the shareholders or members of the transferring institution. If the commissioner is satisfied that the participants in the transaction have complied with all applicable State and federal law with regard to the adoption of the plan of acquisition or assumption, the commissioner shall give written approval to the participants in the transaction to proceed with the plan to acquire or sell assets or to assume liabilities.

§412:3-614 Sale or transfer of charter or license prohibited. No Hawaii financial institution may sell, transfer, or otherwise dispose of any charter, license, approval, or any other right or privilege granted under this chapter, unless the sale, transfer, or disposition is part of a conversion, merger, consolidation, sale, assumption or acquisition of control permitted under this part. Any attempted sale, transfer, or disposition in violation of this section shall be null, void, and unenforceable.

§412:3-615 Nonconforming assets or business. If a Hawaii financial institution resulting from a conversion, merger, consolidation, acquisition, or assumption by law may no longer own certain types of assets once it undergoes the conversion, merger, consolidation, acquisition, or assumption, or if it may no longer engage in certain types of business activities, the commissioner shall, as part of the order approving the transaction, allow a reasonable time within which the institution may divest itself of the nonconforming assets or business activities in order to conform with law.

§412:3-616 Authority for expedited conversion, merger, consolidation, acquisition, or assumption. Upon application of all participating financial institutions in a conversion, merger, consolidation, acquisition or assumption, the commissioner may expedite any application for conversion, merger, consolidation, acquisition, or assumption pursuant to this part and order the transaction to take effect immediately; provided that the financial institutions shall have complied with any applicable federal law and provided that the commissioner finds that such expedited action is necessary to protect the financial institutions' depositors, beneficiaries, creditors, or shareholders, or the public. The commissioner's findings shall be expressed in writing as part of the decision and order approving the conversion, merger, consolidation, acquisition, or assumption.

§412:3-617 Voluntary cessation of business and dissolution. (a) Except for a credit union, a solvent Hawaii financial institution whose capital is not impaired and which has not received a notice of charges and proposed suspension or revocation order pursuant to section 412:2-312 may cease its business and

dissolve if the institution shall have complied with applicable federal law and the following requirements and conditions:

(1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution and recommending that the financial institution be dissolved, and directing that the question of the dissolution be submitted to the commissioner for approval, and, if approved, to a vote of the shareholders or members, which vote may be at either an annual or special meeting. The plan of liquidation and dissolution shall include, but not be limited to, provisions for the orderly payment or assumption of the institution's deposits and other liabilities and for transfer or assumption of all trust, agency and other fiduciary relationships and accounts;

(2) Within five business days after the meeting of the board of directors described in paragraph (1) of this subsection, the financial institution shall file an application with the commissioner pursuant to section 412:3-603 for approval to cease business and dissolve. The application shall be accompanied by a copy of the plan of liquidation and dissolution certified by two executive officers of the financial institution to have been duly adopted by the board and any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to the financial institution's federal insurer;

(3) The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries and creditors will be adequately protected under the plan, the institution is not insolvent or in danger of becoming insolvent, that its capital is not impaired and is not in danger of becoming impaired, and that no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;

(4) Upon receipt of the commissioner's approval to cease business and dissolve, the financial institution shall proceed with the dissolution in accordance with the procedures, conditions and requirements for, and with the effect of, a voluntary dissolution by act of corporation pursuant to chapter 415, except that the vote by shareholders or members to approve the dissolution shall satisfy the requirements of section 412:3-604;

(5) Any financial institution whose capital is impaired or in danger of becoming impaired, and any institution which is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution.

(b) Subject to the approval of the commissioner, a credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(1) The board of directors shall adopt a resolution recommending the voluntary dissolution of the credit union and requesting that the liquidation question be submitted to the members;

(2) Not later than ten days after the board of directors decides to submit the liquidation question to the members, the chairman shall notify the commissioner and any government agency or other organization insuring member accounts thereof, in writing, setting forth the reasons for the proposed liquidation. Not later than ten days after the members act on the liquidation question, the chairman of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question;

(3) As soon as the board of directors decides to submit the liquidation question to the members, all business affairs of the credit union, including, but not limited to, payments on and withdrawal of shares, share certificates, share drafts, deposits, and deposit certificate, the transfer of shares to loans and interest, making investments of any kind, and issuing loans, shall be suspended until the members act on the liquidation question. Upon approval by the members, all business transactions of the credit union shall be permanently discontinued. Necessary expense of operation, however, shall continue to be paid upon authorization by the board of directors or the liquidating agent during liquidation;

(4) An affirmative majority vote by the members by ballot, in person, by letter, or other written communication, is necessary for a credit union to enter into voluntary liquidation. Whenever authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting;

(5) A liquidating credit union shall remain in existence for the purpose of discharging its debts, collecting its loans, distributing its assets, and any other necessary functions in order to conclude its business. A liquidating credit union may sue or be sued for the purpose of enforcing its debts and obligations until its affairs are complete;

(6) The board of directors or the liquidating agent who may be the insurer shall use the assets of the credit union to pay:
   (A) First, the expenses incidental to liquidation including any surety bonds required during liquidation;
   (B) Second, any liability due to nonmembers;
   (C) Third, the deposits and deposit certificates of the members of the credit union;
   (D) Fourth, the remaining assets shall be distributed to the members in proportion to the number of shares held by each member on the date dissolution was approved by the members;

(7) When the board of directors or the liquidating agent determines that all assets of the credit union having a reasonable expectancy of realization have been liquidated and distributed as provided in this section, the board or the liquidating agent, whichever is applicable, shall complete a certificate of dissolution on a form prescribed by the commissioner. Upon the completion of such certificate, the board or the liquidating agent, whichever is applicable, shall file such certificate with the commissioner for the complete dissolution and liquidation of the credit union.

(c) Nothing in this section shall preclude the commissioner at any time from appointing a receiver or conservator for the financial institution pursuant to this chapter, or from seeking any relief or sanction from the circuit court that may otherwise be permitted by law.

§412:3-618 Injunctions. If it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this part or any rule or order of the commissioner under this part, the commissioner may apply to the circuit court for an order enjoining the person from violating or continuing to violate this part or any rule or order and for injunctive relief as the nature of the case or the interests of the financial institution or the financial institution holding company or its depositors, beneficiaries, creditors or shareholders may require.

ARTICLE 4. DEPOSITS IN FINANCIAL INSTITUTIONS GENERALLY

§412:4-100 Law applicable. (a) Sections 412:4-101, 412:4-102 and 412:4-104 shall apply to all Hawaii financial institutions which are authorized by this chapter to solicit, accept and hold deposits. The remaining sections of this article shall apply to all Hawaii financial institutions and, to the extent permitted by federal law, to federal financial institutions which are authorized to solicit, accept and hold deposits in this State.

(b) Other provisions of the laws of this State, including, but not limited to, chapter 490, the uniform commercial code, chapter 551D, the uniform durable power of attorney act, chapter 553A, uniform transfers to minors act, chapter 556, the uniform fiduciaries act, chapter 560, the uniform probate code, and any successor or similar acts shall also be applicable to deposits in this State. The rights, protections, releases and discharges of financial institutions with respect to its depositors or third parties contained in this article and other applicable laws shall be cumulative.

§412:4-101 Forms of deposit. (a) Except as specifically prohibited by federal law or any provision of this chapter, and subject to section 412:8-205 with respect to trust companies, section 412:9-400 with respect to depository financial services loan companies, and section 412:9-500 with respect to nondepository financial services loan companies, Hawaii financial institutions may open accounts and accept deposits therein of any type generally accepted by financial institutions in the United States.

(b) Hawaii financial institutions may open accounts and accept deposits therein in the name of one or more persons, in the person's own right or in a fiduciary or other representative capacity, in any form of ownership not inconsistent with the laws of this State.

§412:4-102 Deposit account statements. A Hawaii financial institution shall provide at least one of the holders of each deposit account with a statement in writing or by electronic means at least quarterly showing deposits, withdrawals, interest earned and the opening and closing balances of the account for the period of the statement; provided that quarterly statements need not be provided to any holders of passbooks or certificates of deposit or time deposit accounts, whether or not matured.

§412:4-103 Statements presumed correct after one year; statute of limitations. (a) Any statement of account rendered by a financial institution to the account holder, and in the case of a multi-party account to any one holder, shall be conclusively presumed to be correct after one year from the date of its first rendition, and unless the holder has objected to such statement within such period, the account shall be deemed finally adjusted and settled.

(b) Any legal action to correct the account not brought within one year shall be barred; provided, however, that the period for commencement of any legal action shall be extended for any length of time that the financial institution has been given notice by the account holder of any alleged error within said one-year period and the financial institution has not denied the account holder's objection to the correctness of the statement.

(c) A statement of account shall be deemed to have been rendered when the financial institution has made a notation in the account holder's passbook, or has provided either a deposit account statement showing the balance of the account and the transactions since the last statement, or a written notice reasonably calculated to apprise the holder of such transactions and balance.

(d) The account holder of an account has a duty to exercise reasonable care and diligence in examining any statement rendered by the financial institution, if any, and nothing in this section relieves the holder of such duty or from the consequences of neglecting such duty.

§412:4-104 Federal deposit insurance required. No bank, savings bank, savings and loan association and depository financial services loan company which is a Hawaii financial institution shall accept deposits unless such deposits are insured to the extent allowed by the Federal Deposit Insurance Corporation or a successor agency. No credit union which is a Hawaii financial institution shall accept deposits or issue shares unless such deposits or shares are insured to the extent allowed by the National Credit Union Administration or a successor agency.

§412:4-105 Accounts held in more than one name. Any deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons. A financial institution shall not be required to inquire as to the source of funds received for deposit to an account in the name of more than one person, or to inquire as to the proposed application of any sum paid from the account. Unless the terms of the deposit account clearly require the signature of more than one person for payment, transfer or withdrawal:

(1) Payment, transfer or withdrawal of funds therefrom by or on the order of any of the persons shall release and discharge the financial institution from any liability for the paid, transferred or withdrawn funds with respect to all of the persons, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal made in accordance with this section; and

(2) If the account is pledged, but not all the owners of the account sign the pledge, the pledge shall nevertheless be valid as to all funds in the account, and the pledge shall not operate to sever or terminate the form of multiple ownership of the account.

§412:4-106 Fiduciary accounts. A financial institution may open accounts and accept deposits therein in the name of a person as a trustee, personal representative, guardian, conservator, agent, custodian or other fiduciary for one or more other persons. Such accounts shall be subject to the following treatment:

(1) If a financial institution has not received written notice and is not on actual notice that a fiduciary named on a deposit account has been removed, resigned, died or adjudicated an incapacitated person by a court of competent jurisdiction under applicable law, it may make payments or allow transfers or withdrawals from the account to or on the order of the fiduciary in accordance with the provisions of its contract with the account holder;

(2) Any fiduciary who withdraws funds from a fiduciary account and whose name appears as a fiduciary on such account shall be presumed by the financial institution to be acting within the scope of any authority granted or belonging to the fiduciary. A payment, transfer or withdrawal from the account made by or on the order of the fiduciary payable to or for the benefit or account of the fiduciary or credited to the personal account of the fiduciary shall not be sufficient in the absence of actual knowledge on the part of the financial institution to charge it with a duty of inquiry or notice of any infirmity or defect in the right or title of the fiduciary to the funds paid, transferred or withdrawn;

(3) If a financial institution pays funds or allows the transfer or withdrawal of funds from a fiduciary account according to the provisions of this section or other applicable law of this State, such payment, withdrawal or transfer shall operate to release and discharge the financial institution of any further liability to any person with respect to the funds so paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal made in accordance with this section;

(4) A financial institution which pays or allows any transfer or withdrawal from a fiduciary account pursuant to this section shall not be liable for any estate taxes that may be due with respect to said account;

(5) Notwithstanding the foregoing, trust accounts established by the financial institution meeting the definition of "trust account" in section 560:6-101 shall be subject to the treatment provided in article VI of chapter 560.

§412:4-107 Accounts of minors. A financial institution may open an account and accept deposits therein in the name of a minor in the same manner as for an adult and the deposit shall be held for the exclusive right and benefit of the minor, free from the control of any other person. All relations between the financial institution and the minor shall be on the same basis as though the minor were an adult, and any payment, transfer or withdrawal made to or on the order of the minor shall operate to release and discharge the financial institution for the paid, transferred or withdrawn funds with respect to all persons, and any pledge of the account by the minor shall be valid. Provided, however, that in case any guardian, conservator or trustee is appointed for the minor by a court having jurisdiction, the financial institution may pay over or credit to the guardian, conservator or trustee the deposit and interest or dividends pertaining thereto, and such payment or credit shall operate to release and discharge the financial institution from further liability to the guardian, conservator or trustee and to the minor with respect to the funds so paid or credited. No action at law or equity may be maintained against the financial institution for payment, transfer, withdrawal or pledge made in accordance with this section.

§412:4-108 No notice of incapacity. If a financial institution has not received written notice and is not on actual notice that a deposit account holder has been adjudicated an incapacitated person by a court of competent jurisdiction under applicable law, it may make payments or allow transfers or withdrawals from the account to or on the order of the account holder in accordance with the provisions of its contract with the holder, and such payment, transfer or withdrawal shall operate to release and discharge the financial institution from further liability to the account holder and the holder's successors in interest with respect to the funds so paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal in accordance with this section.

§412:4-109 Checks drawn or transfers or withdrawals made by authorized persons. Whenever a deposit account holder has authorized another person, whether as an agent, attorney-in-fact, officer, or in any other capacity, to draw checks on or make or order transfers or withdrawals from the account, the financial institution, in the absence of proper written notice to the contrary, shall be justified in presuming that any check drawn on the account or transfer or withdrawal made by or on the order of the authorized person in the form or manner authorized by the account contract, including payments, transfers or withdrawals

made to or for the account and benefit of the authorized person, was paid or made for a purpose authorized by the account holder and within the scope of the authority conferred upon the authorized person. The death, disability or incapacity of the account holder does not revoke or terminate the authority granted by the holder as to the financial institution if, without actual knowledge of the death, disability or incapacity of the holder, the financial institution acts in good faith in accordance with the authorization. Any payment, transfer or withdrawal paid or allowed by the financial institution pursuant to this section shall release and discharge the financial institution from any liability to any person for the funds paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal in accordance with this section.

§412:4-110 Checks drawn or transfers or withdrawals made by intoxicated persons. It shall be lawful for any financial institution to refuse to pay any check, draft, order of transfer or withdrawal, or order drawn upon it when the officers or employees of the financial institution in good faith have reason to believe that the person signing or indorsing the instrument is or was so under the influence of alcohol, drugs or other intoxicating substances as to make it doubtful whether the person is or was at the time of signing or indorsing the instrument capable of intelligently transacting business; and no action at law or equity may be maintained against the financial institution or its officers or employees on account of any refusal pursuant to this section.

§412:4-111 Accounts of deceased nonresidents. A deposit held in a financial institution in the name of a person who dies while domiciled in another state, the District of Columbia and any territory or possession of the United States, leaving an estate in this State which exceeds $5,000 in net value, may be paid to the executor, administrator or other personal representative of the decedent appointed by a court of competent jurisdiction therein. Upon presentation of letters of administration or other documentation purporting to establish the appointment under the law of the decedent's domicile, the financial institution may make the payment without requiring the filing of ancillary proceedings in this State. Upon such payment, the financial institution shall be released and discharged of any further liability to any person with respect to the funds so paid, and no action at law or equity may be maintained against the financial institution for payment made in accordance with this section.

§412:4-112 Pledging of assets. (a) No financial institution shall give a preference to any depositor by pledging the assets of the financial institution, except as otherwise authorized by this chapter; provided that any financial institution may for any purpose borrow money and pledge or hypothecate its assets as collateral security therefor.

(b) A financial institution may pledge its assets to secure deposits or borrowing of public funds. For purposes of this section, "public funds" means funds belonging:

(1) To the State, if credited to the State or to the official credit of the director of finance;

(2) To any county within the State, if credited to such county or to the official credit of the treasurer or similar fiscal officer of the county;

(3) To the government of any state or foreign country, or any territory or possession thereof, or any of its political subdivisions, instrumentalities or municipalities, in which the pledging financial institution has a branch office, if credited to such government or to the official credit of the treasurer or similar fiscal officer thereof;

(4) To the United States, if credited in such manner and under such rules and regulations as may be prescribed by the United States government.

Once the financial institution has complied with all conditions necessary for the return of any assets it has pledged to secure the deposit or borrowing of the public funds, the government official in possession of such assets shall promptly return the same to the financial institution. If such assets are not so returned, the financial institution shall have its appropriate remedies at law and in equity, including, in the case of the State or any county of the State, the remedies under chapter 38; provided, that nothing in this subsection shall permit the avoidance of any requirements or liabilities imposed on the State or any county under chapter 38.

ARTICLE 5. BANKS

PART I. GENERAL PROVISIONS

§412:5-100 Definition. In this article the term "bank" means a corporation which has authority to operate as a bank under this chapter.

§412:5-101 Necessity for bank charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a bank is required by this chapter, including without limitation the solicitation, acceptance and holding of deposits in the State, the use of the term "bank", or the exercise of such other powers or privileges restricted to banks under applicable law unless it is a corporation incorporated in this State and has such a charter.

PART II. POWERS OF BANKS

§412:5-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a bank shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of banking, and shall have all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

(1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
(2) Borrow money from any source within or without the State;
(3) Issue, confirm and advise letters of credit, or otherwise enter into letter of credit transactions;
(4) Enter into repurchase agreements;
(5) Accept drafts or bills of exchange and buy and sell bullion and foreign currency; and
(6) Make investments as permitted under this article.

(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:5-201, a bank shall not:

(1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;
(2) Own or control the capital stock of any other corporation;
(3) Make loans and extensions of credit secured by its own capital stock, except in cases where the taking of the security is necessary to prevent loss upon an indebtedness previously contracted in good faith;
(4) Make loans and extensions of credit secured by the capital stock of another bank, if by making the loan the total capital stock of the other

bank held by the lending bank as collateral would exceed in the aggregate fifty per cent of the capital stock of the other bank; or

(5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:5-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a national banking association under any federal statute, rule, regulation, interpretation or court decision.

(b) Any bank desiring to acquire any federal power, shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other banks may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

(1) That the bank has violated any conditions imposed in connection with the grant of power; or

(2) The bank has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsections (d) or (e) of this section shall be taken only after the commissioner has given the bank notice of the proposed action and an opportunity to be heard.

§412:5-202 Membership in federal banks. Any bank may become a member of a federal reserve bank organized under authority of the Federal Reserve Act or of a federal home loan bank organized under the Federal Home Loan Bank Act, or any successor or similar system of federal banks established by Congress, and may purchase and hold the shares of such federal bank. The bank may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the bank and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:5-203 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:5-305(g)(2) to (8) of which more than eighty per cent of the voting securities is held by a bank.

(b) An operating subsidiary may engage in activities which are authorized for a bank or which are usual or incidental to the business of a bank.

(c) No bank may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the bank's capital and surplus; provided further, that the bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent bank shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:5-302.

(d) The bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

(1) The name and date for commencement of operations;
(2) The specific location;
(3) The activities and nature of business;
(4) The ownership, amount and nature of the investment; and
(5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The bank shall notify the commissioner in writing within five days of acquiring or establishing an operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a bank shall be maintained independently of the accounts of all of the bank's other operating subsidiaries, and independently of the accounts of the bank itself. At least at the end of every quarter of its fiscal year the bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

§412:5-204 Acceptances of drafts and bills of exchange. (a) A bank may accept drafts or bills of exchange drawn upon it without limitation in the character of acceptances it may make in financing credit transactions; provided that a bank's own eligible acceptances described in subsection (b) of this section are subject to the limitations contained in this section in lieu of the separate and distinct limitations contained in section 412:5-302.

(b) A bank may accept the following as eligible acceptances:

(1) Drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of days of grace, and which arise out of transactions involving the import or export of goods, transactions involving the domestic shipment of goods or transactions which are secured at the time of acceptance by a warehouse receipt or other document conveying or securing title covering readily marketable staples;

(2) Drafts or bills of exchange drawn upon it having not more than three months sight to run, exclusive of days of grace, drawn by banks in foreign countries for the purpose of furnishing dollar exchange, as required by the usage of trade in the respective countries. Provided that the drafts or bills of exchange shall be drawn under regulations prescribed by the Federal Reserve Board; and

(3) Drafts and bills of exchange in addition to those described in this section, which are of the kind described by section 13 of the Federal Reserve Act, and which may be eligible for discount under regulations prescribed from time to time by the Federal Reserve Board.

(c) No bank shall accept eligible drafts or bills of exchange, whether in a foreign or domestic transaction, for any one person, in an amount at any one time exceeding in the aggregate twenty per cent of its capital and surplus.

(d) No bank shall accept drafts or bills of exchange in an amount exceeding at any time in the aggregate one hundred and fifty per cent of its capital and surplus; provided that the commissioner may authorize a bank to accept drafts or bills of exchange in an amount not exceeding at any time in the aggregate two hundred per cent of its capital and surplus.

(e) With respect to a bank which issues an eligible acceptance, the limitations contained in this section shall not apply to that portion of the eligible acceptance sold under a participation agreement to another financial institution or to a discounted eligible acceptance that is no longer held by the bank.

(f) None of the limitations or restrictions in this section shall apply to drafts or bills of exchange secured by bonds or other securities issued by the United States government, by the State or by a municipality thereof, if the market value of the bonds or other securities exceeds at the time of acceptance by five per cent the amount of the drafts or bills of exchange.

(g) The purchase or discount of banker's acceptances issued by other banks which are of the kind described in section 13 of the Federal Reserve Act, or which are eligible for discount under regulations prescribed from time to time by the Federal Reserve Board, shall not be subject to any limitation based on capital and surplus.

§412:5-205 Authority to engage in trust business. (a) A bank may not engage in any activity requiring a charter as a trust company under article 8 of this chapter, including without limitation serving as trustee, personal representative, registrar or transfer agent for stocks and bonds, guardian, agent, assignee, or receiver, or in any other fiduciary capacity, unless it has received the approval of the commissioner under this section. If approved, the trust business may be conducted through a subsidiary, division or department of the bank.

(b) The bank shall file an application for such approval with the commissioner on a form prescribed by the commissioner, together with an application fee of $5,000, or such greater amount as the commissioner shall establish, no part of which shall be refundable. The application shall contain the following information:

(1) Appropriate board resolutions authorizing the establishment of a trust company, division or department;

(2) Employment history, education, management experience, and other biographical information for all executive officers, trust officers, and managers of the trust company, division or department;

(3) Proposed policies concerning common trust funds, overdrafts, disaster recovery plans, dividends, management of assets and liabilities, conflicts of interest, investments, and fee schedules. The commissioner may consider any existing bank policies that will be adapted and utilized for its trust business;

(4) A business plan and financial projections regarding profitability of the proposed trust business;
(5) Evidence that the bank has or will have the financial ability, responsibility, and experience to engage in the trust business; and
(6) Any other information which the commissioner may require.

(c) If the proposed trust business will be conducted in a subsidiary of a bank, the application shall contain the following additional information:
(1) The name of the subsidiary, the location of its principal office, and any lease agreements for such principal office;
(2) Employment history, education, management experience, and other biographical information for all directors of the subsidiary; and
(3) A proposed capital plan.

(d) A bank engaging in the trust business shall establish and maintain the same amount of capital and surplus required of a trust company under article 3 of this chapter, in addition to any capital and surplus required to engage in the business of a bank under this article. A bank engaging in the trust business shall also maintain the reserves required of a trust company under section 412:8-202.

(e) The commissioner's decision shall be in the form of a written order, and if approved, may contain such conditions and restrictions as may be in the public interest. The application shall be approved only if the commissioner is satisfied that the proposed trust business will not jeopardize the safety and soundness of the bank; that the applicant has sufficient capital, surplus, and cash reserves; that the proposed management of the trust business is financially responsible, honest, and qualified; and that the trust business will be carried on in a safe and sound manner. If the commissioner grants approval to a bank to carry on its trust business through a subsidiary, the commissioner shall issue a trust charter to such subsidiary.

(f) Any bank which is authorized to engage in the trust business through a division or department of the bank shall maintain books, records, and accounts for its trust business that are separate from its banking business.

(g) A bank which is authorized to engage in the trust business through a subsidiary shall not be considered a trust holding company under this chapter.

(h) Any bank authorized to engage in the trust business under this section with respect to such trust business shall also be subject to all the provisions applicable to trust companies under article 8 of this chapter; provided that if there is any conflict between the provisions of article 8 and this article with respect to the operation of a trust business, the provisions of article 8 shall control with respect to such trust business.

§412:5-206 International banking facilities. A bank may without prior approval of the commissioner establish an international banking facility anywhere in this State. An international banking facility is a set of international banking accounts under Regulation D of the Federal Reserve Board (12 C.F.R. Part 204). At least fourteen days prior to the establishment of an international banking facility any bank intending to do so shall furnish the commissioner with a copy of the statement of intention required under Regulation D. Every bank maintaining an international banking facility shall furnish the commissioner with a copy of each quarterly report required under Regulation D.

PART III. LOANS AND INVESTMENTS

§412:5-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all banks. A bank may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:5-301 General requirements for loans. A bank shall make loans and extensions of credit that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:5-302 Limitations on loans and extensions of credit to one borrower. (a) No bank shall permit a person to become indebted or liable to it, either directly or indirectly on loans and extensions of credit, in a total amount outstanding at any one time in excess of twenty per cent of the capital and surplus of the bank.

(b) This section applies to all loans and extensions of credit made by a bank and its subsidiaries. It does not apply to loans and extensions of credit made by a bank or its subsidiaries to its affiliates or subsidiaries.

(c) The limitations set forth in this section shall not apply to:

(1) A bank's eligible acceptances as described in section 412:5-204(b);

(2) A bank's purchase or discount of another bank's acceptances of the kinds described in section 13 of the Federal Reserve Act;

(3) A bank's deposits with a Federal Reserve Bank, Federal Home Loan Bank or another depository institution made in compliance with this chapter;

(4) A bank's sale of federal funds to another depository institution with a maturity of one business day or under a continuing contract;

(5) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit;

(6) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the lending bank; and

(7) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable credit sales contracts which carry a partial recourse endorsement or limited guarantee by the person transferring the credit sales contracts, if the bank's respective file or the knowledge of its officers of the financial condition of each maker of such credit sales contract is reasonably adequate, and an officer of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such credit sales contract and not upon any partial recourse endorsement or limited guarantee by the transferor. Under these circumstances, such credit sales contract will be considered a loan and extension of credit to the maker of the credit sales contract rather than the seller of the credit sales contract.

(d) In computing the total loans and extensions of credit made by a bank to any person, all loans and extensions of credit by the bank to the person and to any partnership, joint venture or unincorporated association of which the person is a partner or a member shall be included unless the person is a limited partner, but not a general partner, in a limited partnership, or unless the person is a partner in a limited or general partnership, or a member of a joint venture or unincorporated association, if such partner or member, by law, by the terms of the partnership, joint venture or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the bank for the debts of the partnership, joint venture or association. In computing the total loans and extensions or credit made by a bank to any firm, partnership, joint venture or unincorporated association, all

loans and extensions of credit to its individual partners or members shall be included unless such individual partner is a limited partner, but not a general partner, in a limited partnership, or unless such individual partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the bank for the debts of the partnership, joint venture or association.

(e) Alternatively, a bank may, with the prior approval of the commissioner, comply with the lending limits applicable to national banking associations, as and to the same extent it would, at the time, be so required by federal law or regulation if it were a national banking association. In monitoring a bank's compliance with the national banking association lending limits, the commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and opinions interpreting the national banking association lending limits and will regard them as strong evidence of safe and sound banking practices.

§412:5-303 Loans to executive officers, directors, principal shareholders and affiliates. No bank shall make any loan or extension of credit in violation of section 18(j) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j) or, if the bank is a member of the Federal Reserve System, in violation of sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act, 12 U.S.C. §§375a, 375b, 371c and 371c-1.

§412:5-304 General requirement for investments. A bank shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:5-305 Permitted investments. (a) To the extent specified herein, a bank may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

(3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a

shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus.

(b) To the extent specified herein, a bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a bank may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a bank shall not exceed twenty per cent of the bank's capital and surplus.

(d) To the extent specified herein, a bank may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a bank under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the bank's capital and surplus.

(e) To the extent specified herein, a bank may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable- related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the bank in its prudent banking judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a bank under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the bank's capital and surplus.

(f) To the extent specified herein, a bank may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the bank is carried on, including its banking offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the bank's business, including but not limited to parking facilities, data processing centers, and real property held for future banking use where the bank in good faith expects to utilize the property as bank premises; provided, if the bank ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not without the approval of the commissioner exceed seventy-five per cent of the bank's capital and surplus;

(2) Personal property used in or necessary to the accommodation of the bank's business, including but not limited to furniture, fixtures, equip-

ment, vaults and safety deposit boxes. The bank's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the bank's capital and surplus;

(3) Personal property and fixtures which the bank acquires for purposes of leasing to third parties and such real property interests as shall be incidental thereto;

(4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business, when such property was held as security by the bank; and

(5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a bank pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not without the written consent of the commissioner be considered a part of the assets of the bank after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the bank within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any bank acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the bank the impairment shall be made good in the manner provided in this chapter.

(g) A bank may own or control the capital stock:

(1) Of operating subsidiaries as set forth in this article;

(2) Of a corporation organized and existing for the ownership of real or personal property used or which the bank in good faith expects to be used in the bank's business;

(3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;

(4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;

(5) Of bank service corporations, subject to the provisions of the Bank Service Corporation Act, 12 U.S.C. §§1861-1862;

(6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;

(7) Of an international banking corporation established pursuant to article 5A of this chapter or an Edge corporation or an Agreement corporation established or authorized pursuant to section 25a of the Federal Reserve Act, 12 U.S.C. §631; and

(8) Of a captive insurance company incorporated under the laws of the United States, or any state or territory thereof, or the District of Columbia.

§412:5-306 Deposits made by banks. A bank may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the bank's capital and surplus, unless otherwise permitted by federal law. In this section, "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

PART IV. INTRA-PACIFIC BANKS

§412:5-400 Definitions. In this chapter:

"Intra-Pacific bank" is a depository institution or a banking company (1) engaged in the type of business permitted to banks chartered by this State, (2) whose home office is located in a reciprocal region, (3) a majority of whose deposits together with the deposits of its subsidiaries and affiliates are held in a reciprocal region, and (4) which is not directly or indirectly owned or controlled by any holding company other than an intra-Pacific bank holding company.

"Intra-Pacific bank holding company" is a holding company whose subsidiary banking companies hold a majority of the aggregate deposits in a reciprocal region.

"Reciprocal region" means any one of the territories or countries of Guam, American Samoa, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of the Northern Marianas, or the Republic of the Marshall Islands, only so long as:

(1) Its economy is based on the United States dollar; and

(2) Its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies.

§412:5-401 Required approval. No intra-Pacific bank or intra-Pacific bank holding company may engage in business in this State, except in one of the following three forms:

(1) Branch. An intra-Pacific bank may establish or acquire one or more branches in this State if it obtains the prior approval of the commissioner under this chapter to operate such branch or branches;

(2) Subsidiary of an intra-Pacific bank. An intra-Pacific bank may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaii financial institution or its holding company if the intra-Pacific bank obtains the prior approval of the commissioner and:

  (A) Complies with the requirements of this chapter as to mergers and acquisitions; and

  (B) Obtains a charter under this chapter to engage in business as a bank;

(3) Subsidiary of an intra-Pacific bank holding company. An intra-Pacific bank holding company may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaiian financial institution or acquire control over or merge with, its holding

company if the intra-Pacific bank holding company obtains the prior approval of the commissioner and:

(A) Complies with the requirements of this chapter as to mergers and acquisitions; and

(B) Obtains a charter under this chapter to engage in business as a bank.

§412:5-402 Procedure to obtain approval. (a) In order to obtain prior approval of the commissioner, the applicant shall file the application required by and comply with the provisions of article 3. In addition to any information required under article 3, the application shall contain the following information:

(1) The applicant's articles of incorporation and bylaws, or other basic governing documents; and

(2) A certificate from the appropriate regulatory body where its home office is located, indicating that the applicant is in good standing in that jurisdiction.

(b) In approving any transaction under this part, the commissioner shall consider in addition to the grounds for approval contained in article 3, the following:

(1) The laws of the reciprocal region allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies; and

(2) The applicant's controlling persons are of good moral character and sound financial standing, its management is competent and sufficiently experienced, it is likely to comply with all applicable laws, and its establishment will serve the public convenience and advantage.

(c) Where an intra-Pacific bank branch is being established, the minimum number and qualifications of persons serving on the board of directors of an intra-Pacific bank shall be established by the applicable law of its home office.

§412:5-403 Examination and regulation. Every intra-Pacific bank shall be subject to examination and regulation by the commissioner, and shall pay fees and costs to the same extent as any bank chartered under the laws of this State.

§412:5-404 Termination of authority of intra-Pacific bank. The authority of any intra-Pacific bank to engage in the business of a bank in this State pursuant to this part shall automatically terminate at such time as it no longer meets the definition of an intra-Pacific bank under section 412:5-400. In such case it shall:

(1) Immediately notify the commissioner of that circumstance;

(2) Cease accepting deposits in this State, and cease making loans and investments in this State;

(3) Within thirty days, adopt a plan for the orderly liquidation of its assets, or its orderly divestiture pursuant to this chapter, and submit such plan to the commissioner; and

(4) Take such other measures and actions as shall be directed by the commissioner.

§412:5-405 Termination of authority of intra-Pacific bank holding company. (a) A financial institution holding company ceases to be an intra-Pacific bank

holding company at such time as it no longer meets the definition of an intra-Pacific bank holding company under section 412:5-400.

(b) A financial institution holding company which loses its status as an intra-Pacific bank holding company shall immediately divest itself of its direct or indirect control of any financial institution subsidiary chartered or approved by this State. Failure to accomplish such divestiture within thirty days after termination of its intra-Pacific bank holding company status shall be grounds for the suspension or revocation of the financial institution subsidiary's charter or approval.

§412:5-406 Paid-in capital and surplus. Every intra-Pacific bank engaged in banking in this State shall at all times have paid-in capital and surplus of not less than the minimum amount provided by this chapter for banks which are Hawaii financial institutions.

§412:5-407 Same powers and duties as banks. An intra-Pacific bank engaged in banking in this State shall have all powers and duties allowed by and imposed on all banks chartered by this State, including without limitation the authority to accept deposits, make loans, borrow money and make investments, and the duty to file reports with the commissioner and insure its deposits in this State with a federal agency. An intra-Pacific bank shall also be subject to and liable for all fines and penalties provided by this chapter.

ARTICLE 5A. INTERNATIONAL AND FOREIGN BANKING

PART I. GENERAL PROVISION

§412:5A-100 Applicability of other provisions of this chapter. Unless otherwise expressly provided in this article, the entities covered by this article shall have none of the powers generally given to Hawaii financial institutions under this chapter. Neither shall such entities be required to file any reports or give any notices except as may be expressly provided in this article.

PART II. INTERNATIONAL BANKING CORPORATIONS

§412:5A-200 Scope and definitions. (a) As used in this chapter an "international banking corporation" means a corporation which has authority to operate as an international banking corporation under this part and has been required to use the term "international banking corporation," or such other term approved by the commissioner and containing the word "international," "foreign," "overseas," or some similar word as part of its name. The term "international banking corporation" also includes a person that was organized and operating under chapter 405 prior to the enactment of this chapter.

(b) The existence, charters, licenses, and certificates of authority of international banking corporations formed or existing on the effective date of this chapter are not affected by the enactment of this chapter nor by any change made thereby in the requirements for the formation of international banking corporations, nor by the amendment or repeal thereby of the laws under which they were formed, created, chartered, licensed or certified.

(c) Except to the extent specifically provided in this chapter, the power and authority of international banking corporations existing on the effective date of this chapter shall not be limited or restricted in any way by the enactment of this chapter nor by the amendment or repeal of the laws under which they were formed or created, or which granted such power and authority.

§412:5A-201 Application; fee; approval. (a) No bank may establish a corporation to engage in foreign or international banking and other foreign or international financial activities unless it has filed an application with the commissioner and received approval and authority to establish an international banking corporation and to exercise the powers set forth in this part.

(b) The application shall be on a form prescribed by the commissioner and shall contain any information that the commissioner may require. The application shall be accompanied by an application fee established by the commissioner pursuant to chapter 91.

(c) In granting authority to a bank to establish an international banking corporation, the commissioner may impose such conditions that are in the public interest, including but not limited to the filing of periodic reports or notices.

§412:5A-202 Majority ownership by bank. A majority of the shares of the capital stock of every international banking corporation shall be owned by a bank that is a Hawaii financial institution, a national bank whose operations are principally conducted in this State, or a wholly-owned subsidiary of either of the foregoing.

§412:5A-203 Paid-in capital and surplus. Every international banking corporation shall at all times have paid-in capital and surplus in such amounts as shall be established for all international banking corporations by rule by the commissioner; provided, that:

(1) Paid-in capital shall at no time be less than $750,000, except that upon receiving its approval the international banking corporation need have only twenty-five per cent of the required capital paid-in, and the remainder may be paid up in installments of at least ten per cent of total required capital every two months thereafter; and

(2) The minimum required surplus shall be twenty per cent of capital and need not be paid in or accumulated unless and until the international banking corporation has declared a dividend, whereupon at least ten per cent of its net profits shall be paid to surplus until the required minimum surplus has been fully paid up.

§412:5A-204 Prohibition of business in United States. No international banking corporation shall carry on any part of its business in the United States except as shall, in the judgment of the commissioner, be incidental to its international or foreign business.

§412:5A-205 Powers and duties. Every international banking corporation shall be authorized:

(1) To engage in banking or financial operations in any foreign country, or in a dependency, territory or possession of the United States, either directly or indirectly through the agency, ownership or control of a foreign institution;

(2) When required by the Secretary of the Treasury of the United States, to act as a fiscal agent of the United States in any foreign country, or in a dependency, territory or possession of the United States;

(3) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligations of the United States or of any state thereof, but not including shares of stock

in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to the limitations and restrictions which the commissioner may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to lease personal property and engage in activities incidental thereto; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the commissioner may prescribe, but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital and surplus; to receive deposits outside of the United States and to receive only such deposits in this State or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies, territories or possessions of the United States;

(4) Generally, to exercise such powers as are incidental to the powers conferred by this part or as may be usual, in the determination of the commissioner, in connection with the transaction of the business of banking or other financial operations in the countries, dependencies, territories or possessions in which it shall transact business and not inconsistent with the power specifically granted herein;

(5) To establish and maintain for the transaction of its business branches or agencies in foreign countries, and in any state of the United States, and in the dependencies, territories or possessions of the United States, at such place as may be approved by the commissioner and under such rules as the commissioner may prescribe; and

(6) To purchase and hold stock or other certificates of ownership in any other corporation organized under this article, or under the laws of the United States, or under the laws of any foreign country, or under the laws of any state, dependency, territory or possession of the United States; provided that the other corporation shall not engage in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and shall not transact any business in the United States except such as in the judgment of the commissioner may be incidental to its international or foreign business. Any acquisition of such stock or certificates of ownership by an international banking corporation shall be subject to the prior approval of the commissioner, who shall render a decision within sixty days following submission of an application; provided, however, that the commissioner may extend such deadline for an additional sixty days for good cause.

§412:5A-206 Acceptance of deposits and reserves. An international banking corporation may only accept deposits subject to the provisions of this article. Whenever an international banking corporation receives deposits in the United States, as may be authorized by this section, it shall carry reserves in such amounts as the commissioner may prescribe, but in no event less than ten per cent of its total deposits in the United States.

§412:5A-207 Deposit of corporate funds. No international banking corporation shall deposit its funds with another financial institution except in a federal reserve bank, unless the other financial institution has been designated a depository by the board of directors of the international banking corporation.

§412:5A-208 Limitation on investments. An international banking corporation may not invest its funds in the United States, except to the extent permitted by this part.

§412:5A-209 Acquisition of stock in competing corporation. No international banking corporation shall purchase, own, or hold stock or certificates of ownership in any other international banking corporation or any Edge corporation or similar corporation organized under the laws of the United States or any state if the effect within the United States of such purchase, ownership, or holding may be substantially to lessen competition or tend to create a monopoly or restraint of trade.

§412:5A-210 Acquisition of stock to save a loss. Nothing in this part shall prevent an international banking corporation from acquiring and holding stock in any corporation if the acquisition is necessary to prevent a loss upon a debt previously contracted in good faith; provided, that stock so acquired shall within twelve months from the acquisition be sold or disposed of at public or private sale,or within such further time as may be granted by the commissioner.

§412:5A-211 Prohibited corporate activities. No international banking corporation shall directly or indirectly:

(1) Engage in commerce or trade in commodities, except as specifically provided in this part, or control or fix, or attempt to control or fix, the price of any commodities; or

(2) Make any discount to any person for the purpose of enabling the person to pay for or hold shares of its stock either subscribed for or purchased by the person.

Any violation of this section shall subject the international banking corporation to the revocation of its approval, and to such penalties and administrative fines prescribed under article 2.

§412:5A-212 Improper discounting of loans. No officer, director, agent or employee of an international banking corporation shall directly or indirectly, as an individual, purchase any loan or other obligation at a discount, or make any loan using a receivable as collateral, when such person knows that the loan or other obligation has been offered to the corporation and has been refused. Any violation of this section shall subject the violator to a civil penalty equal to twice the amount of the consideration given for the loan.

§412:5A-213 Improper fixing of commodity prices. Any director, officer, agent, or employee of any international banking corporation who knowingly uses or conspires to use the credit, funds, or power of the international banking corporation to fix or control the price of any commodities shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:5A-214 Misrepresentation of State liability for bonds. Any person connected in any capacity with an international banking corporation who represents in any way that the State is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any international banking corporation, or that the State is liable for any act or omission of the international banking corporation shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640.

PART III. FOREIGN BANK OFFICES AND AGENCIES

§412:5A-300 Applicability of part. This part shall apply to all foreign banks desiring to engage in business in this State, or which are engaging in business in this State.

§412:5A-301 Applicable laws. In addition to this article, foreign banks granted a license under this part shall be subject to articles 1 through 3 and 5 of this chapter; provided, that: (1) if there is any inconsistency between any provision of this article and those prior articles, the provisions of this article shall control; (2) those prior articles shall not apply where it appears from context or otherwise that they are clearly applicable only to banks organized under the laws of this State; and (3) foreign banks shall have no greater powers than are allowed banks chartered under this chapter.

§412:5A-302 Definitions. In this chapter:

"Foreign bank" means a banking company whose home or principal office is located in a foreign nation and whose activities are those usually carried on by banks in such foreign nation, and includes without limitation commercial banks and merchant banks.

"Foreign nation" means any nation other than the United States. The term also includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States and any political subdivision, territory, trust territory, dependency, or possession of a foreign nation.

"Office" means a representative office, nondepository agency, or depository agency of a foreign bank, as described in section 412:5A-303.

§412:5A-303 Authorized activities. (a) No foreign bank may conduct any activities in this State for which a charter or license as a financial institution is required except to the extent permitted under this part. Subject to this part foreign banks may open and maintain the following types of offices in this State:

(1) Representative office: at which the foreign bank may conduct only representational functions, but may not solicit or accept deposits, may not make business decisions on behalf of the bank, and may not otherwise transact business. The term "representational functions" means activities solely involving public relations, promotion and goodwill, including without limitation the offering of free informational services, contact with representatives of the bank, and the use of its office facilities. For purposes of this article, if a person establishes or maintains an office in this State as a "representative" of a foreign bank with the authority or acquiescence of the bank, the foreign bank shall be deemed to have established or to be maintaining a representative office;

(2) Nondepository agency: at which the foreign bank may engage in the types of activities that are permitted by both this State and the government where its home office is located, except as prohibited by this article and except that no deposits of any kind may be accepted; or

(3) Depository agency: at which the foreign bank may engage in the same activities permitted at nondepository agencies, but shall also be permitted to accept only the following types of deposits:

(A) Deposits of a foreign nation, its political subdivisions, agencies, or instrumentalities; and

(B) Deposits of persons who reside, are domiciled and maintain their principal place of business in a foreign nation, and are not citizens of the United States.

(b) A foreign bank may not maintain both a federal and a State agency in this State at the same time. However, a foreign bank may maintain an agency and one or more representative offices in this State at the same time.

(c) A foreign bank may not be licensed under this chapter to maintain both a nondepository and a depository agency at the same time in this State.

(d) A foreign bank licensed to maintain an office in this State shall not transact any trust business, establish branches, or accept deposits except such deposits as are expressly authorized in this part.

§412:5A-304 License to establish office. (a) In order to obtain a license under this part, a foreign bank shall file an application with the commissioner in which the applicant shall furnish the following information, unless waived by the commissioner:

(1) The name of the foreign bank;
(2) The specific location of the proposed site of the office;
(3) The anticipated opening date and, if open for a specified period, the end of such period;
(4) The nature of the business or transactions intended to be carried on at the location;
(5) The foreign bank's articles of incorporation and bylaws, or other basic governing documents;
(6) A certificate from the appropriate regulatory body where its home office is located, indicating that the foreign bank is in good standing in that jurisdiction;
(7) Evidence that the assets of the corporation located anywhere throughout the world have an aggregate value in United States currency of $10,000,000,000 and that the corporation has been engaged in the banking business for at least ten years prior to filing an application pursuant to this section;
(8) Names, residence addresses, and biographical information for the foreign bank's controlling persons, directors, executive officers, and proposed management of the office, sufficient to determine their character, financial standing, education and experience;
(9) History and financial standing of the foreign bank including but not limited to its current financial statements;
(10) A statement under oath appointing an agent in this State for receipt of service of process if the license is granted; and
(11) Any other information that the commissioner may require.

The application shall be accompanied by a filing fee the amount of which shall be established by rule pursuant to chapter 91.

(b) The commissioner shall conduct such review, investigation, and informational and comment proceedings as the commissioner deems necessary. The commissioner shall issue the license if the commissioner determines that the foreign bank's controlling persons, directors, executive officers and proposed management of the office are of good moral character and sound financial standing, its management is competent and sufficiently experienced, the financial history and condition of the bank are satisfactory and it is likely to comply with all applicable laws and rules. The license may contain such restrictions and conditions as the commissioner deems appropriate.

(c) For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling

person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including but not limited to a finding that such director, officer, or controlling person has:

(1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
(2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
(3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
(4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
(5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

§412:5A-305 Denial of license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with the provisions of chapter 91. Any final decision of the commissioner denying an applicant a license may be appealed to the circuit court as provided in chapter 91.

§412:5A-306 Non-assignability of license. No license granted under this part shall be transferable or assignable.

§412:5A-307 Name used by foreign bank. The name used by every foreign bank office licensed in this State shall contain the term "representative office," or "agency," as the case may be.

§412:5A-308 Service of process. Service may be made on a foreign bank by leaving a copy of the process at the office of the appointed agent in this State.

§412:5A-309 Places of business. (a) All business conducted in this State by a foreign bank licensed pursuant to this part shall be conducted only in the office designated in the license. Any such office shall be located in a single building or in adjoining buildings, unless the commissioner in writing authorizes the use of another building in the vicinity of the office.

(b) If the foreign bank is licensed to maintain two or more offices, the bank shall designate one of the offices as its principal place of business in this State.

§412:5A-310 Relocating offices. (a) No foreign bank may relocate its office to another location in this State without the commissioner's prior written approval; provided, that such approval shall not be required if the relocation will be less than one mile from the foreign bank's present place of business, the foreign bank gives the commissioner written notice at least twenty days prior to the move, the type of business carried on at the new place of business will be the same as at the present place of business and there will be no financial involvement in the

relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.

(b) The foreign bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be established by the commissioner by rule pursuant to chapter 91. The application shall state:

(1) The name of the foreign bank;
(2) The specific location of the proposed site of the office;
(3) The anticipated opening date and, if open for a specified period, the end of such period; and
(4) Any other information that the commissioner may require.

(c) If the commissioner is satisfied that the proposed relocation is justified and proper, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

§412:5A-311 Notice and deadline for opening or relocating office. Every foreign bank permitted under this part to open or relocate an office shall notify the commissioner in writing that such opening or relocation has been completed, no later than five days after the opening or relocation. If the opening or relocation will not be completed within nine months after the opening date stated in the application, the foreign bank may obtain from the commissioner an extension of the time to open or relocate, which shall be reasonably granted for good cause. If such extension is not obtained in writing, the commissioner may revoke the permission to open or relocate.

§412:5A-312 Segregation of assets. A foreign bank licensed to transact business in this State shall keep the assets of such business separate and apart from the assets of its business outside the State. In case of any default, insolvency, or liquidation by a foreign bank, its creditors with respect to business conducted in this State shall have priority over all other creditors as to the assets of the bank in this State.

§412:5A-313 Calculation of assets and liabilities. When any provision of this chapter applicable to a foreign bank licensed under this part requires the computation of the bank's assets and liabilities to determine restrictions or limits on investments, loans, and the like, only the assets and liabilities of the bank's agencies or representative offices in this State shall be included, and all other assets and liabilities shall be excluded.

§412:5A-314 Deposit for security. (a) No foreign bank shall be licensed to establish an agency in this State unless it first deposits and maintains $500,000 or such greater amount as determined by the commissioner to be sufficient to protect the interests of the creditors of the bank's business in this State and to protect the public interest, while allowing the bank to remain in sound financial condition.

(b) "Creditors of the bank's business in this State" are, for purposes of this part, creditors of a foreign bank who are domiciled in this State and whose business with the bank was actually transacted in this State.

(c) The deposit under this section shall be made and kept only in a bank that is a Hawaii financial institution or in a national bank whose operations are principally conducted in this State which has been selected by the foreign bank and approved in writing by the commissioner; provided, that the depository bank must have filed with the commissioner an agreement to comply with this section and any rule or order of the commissioner pursuant to this section.

(d) The only assets which may be deposited in order to comply with this section are as follows:

(1) Cash;

(2) Any negotiable certificate of deposit which:

(A) Has a maturity of not more than one year;

(B) Is payable in the United States; and

(C) Is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign bank which is located in the United States;

(3) Any commercial paper which is payable in the United States and which is not rated lower than P-1 or its equivalent by any nationally recognized rating service;

(4) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve Bank;

(5) Any other asset which the commissioner determines is eligible.

An asset will not satisfy the requirements of this section if it is an instrument that is issued by the foreign bank itself, or by a person who controls, is controlled by or is in common control with the foreign bank, or by an issuer domiciled in or controlled by the foreign nation in which the foreign bank's home office is located, or is issued by a person controlled by another person domiciled in that foreign nation.

(e) The value of any asset deposited pursuant to this section shall be the lower of fair market value or par value.

(f) A deposit made pursuant to this section shall be deemed to be pledged to the commissioner for the benefit of creditors of the bank's business in this State. Notwithstanding anything to the contrary in the Uniform Commercial Code, chapter 490, the commissioner shall have a security interest in the deposit, for the benefit of the creditors. The deposit shall be free from any lien, charge, right of set off, credit, claim, or preference of the approved depository against the foreign bank making the deposit.

(g) If the foreign bank ceases to be licensed under this part, it shall nevertheless maintain the deposit required by this section for a period of time determined by the commissioner to be necessary for the protection of the creditors of the bank's business in this State, and to protect the public interest.

(h) In case the commissioner takes possession of the foreign bank's assets and business for any reason allowed under this chapter, the approved depository shall, upon the commissioner's written order, release to the commissioner any deposit made pursuant to this section.

(i) If a foreign bank fails to pay any judgment creditor of the bank's business in this State, the commissioner may order an approved depository to release all or portions of the deposit made pursuant to this section for such payment. The commissioner shall not issue such an order except upon a showing that the judgment:

(1) Arose out of the bank's business in this State;

(2) Has been entered by a court of this State or of the United States;

(3) Has become final, in that all possibility of direct attack on the judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted; and

(4) Has remained unpaid for a period of not less than sixty days after becoming final.

(j) An approved depository shall not disburse or allow any withdrawal from a deposit established pursuant to this section, without the prior written approval of the commissioner; provided, that any interest or other earnings thereon shall be disbursed to the foreign bank unless and until the commissioner suspends or revokes the bank's license, or takes possession of its property and business in this

State. All deposits, earnings thereon, and disbursements from the deposit shall be reported to the commissioner within ten days after each such occurrence.

§412:5A-315 Surrender of license. No foreign bank may surrender its license without the commissioner's prior written approval. To obtain such approval, the bank must submit an application to the commissioner stating the reasons for the surrender, together with a report indicating:

(1) The current financial condition of the bank in a form prescribed by the commissioner;
(2) The current business being conducted in the State, and an indication of the assets and liabilities attributable to business conducted in this State;
(3) A list of all creditors of the bank's business in this State, and their outstanding balances; and
(4) Any other information as the commissioner may require.

The commissioner shall grant the application if the commissioner is satisfied that the termination of the license will not jeopardize the public interest. Any termination under this section shall be effective thirty days after approval, unless otherwise provided by the commissioner, and shall be upon such terms and conditions as shall be specified in the order granting the application.

§412:5A-316 Commissioner's regulatory powers. Every foreign bank licensed under this part shall be subject to all the provisions of article 2 of this chapter to the same extent as Hawaii financial institutions, except that:

(1) The commissioner may limit the scope of any examination or may require an examination of the bank's records at its home office;
(2) The commissioner's jurisdiction over the bank's assets shall be limited to the assets located in this State or which were improperly removed from this State; and
(3) The commissioner's power to reorganize or effectuate an acquisition or merger shall be limited to the bank's assets located in this State.

ARTICLE 6. SAVINGS BANKS

PART I. GENERAL PROVISIONS

§412:6-100 Definition. In this article, "savings bank" means a corporation which has the authority to operate as a savings bank under this chapter.

§412:6-101 Necessity for savings bank charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a savings bank is required by this chapter, including without limitation the solicitation, acceptance and holding of deposits in this State, the use of the term "savings bank," or the exercise of such other powers or privileges restricted to savings banks under applicable law, unless it is a corporation incorporated in this State and has such a savings bank charter.

PART II. POWERS OF SAVINGS BANKS

§412:6-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a savings bank shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of a savings bank, and shall have all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

(1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
(2) Borrow money from any source, within or without the State;
(3) Enter into repurchase agreements;
(4) Buy and sell foreign currency; and
(5) Make investments as permitted under this article.

(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:6-201, a savings bank shall not:

(1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
(2) Own or control the capital stock of any other corporation after July 1, 1994;
(3) Deal in gold bullion, except a savings bank may buy and sell gold coins minted by the United States Treasury; or
(4) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:6-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal savings bank under any federal statute, rule, regulation, interpretation or court decision.

(b) Any savings bank desiring to acquire any federal power shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other savings banks may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

(1) That the savings bank has violated any conditions imposed in connection with the grant of power; or
(2) The savings bank has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsec-

tions (d) or (e) of this section shall be taken only after the commissioner has given the savings bank notice of the proposed action and an opportunity to be heard.

§412:6-202 Membership in federal home loan bank. Any savings bank may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar system of federal home loan banks established by Congress, and may purchase and hold the shares of such federal home loan bank. The savings bank may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the savings bank and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:6-203 Service corporations. (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings banks or savings and loan associations.

(b) Subject to the approval of the commissioner, a savings bank may form and own a service corporation only if the institution or institutions participating in the formation of the corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings bank may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings bank's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (1) the supervision of the commissioner; (2) examination pursuant to this section; and (3) such other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings bank in such corporation and whether the activities of the corporation pose a significant risk of loss to the parent savings bank. The corporation shall pay the entire cost of such examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings bank or savings and loan association and such other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a savings bank's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings bank: (1) the improper activity shall be discontinued; or (2) the savings bank shall divest itself of its ownership or investment in the service corporation. The service corporation or the savings bank may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:6-204 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:6-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings bank.

(b) An operating subsidiary may engage in activities which are authorized for a savings bank or which are usual or incidental to the business of a savings bank.

(c) No savings bank may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the savings bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings bank's capital and surplus; provided further, that the savings bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings bank shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:6-303.

(d) The savings bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

(1) The name and date for commencement of operations;
(2) The specific location;
(3) The activities and nature of business;
(4) The ownership, amount and nature of the investment; and
(5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The savings bank shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings bank shall be maintained independently of the accounts of all of the savings bank's other operating subsidiaries and independently of the accounts of the savings bank itself. At least at the end of every quarter of its fiscal year the savings bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

PART III. LOANS AND INVESTMENTS

§412:6-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all savings banks. A savings bank may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:6-301 General requirements for loans. A savings bank shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:6-302 Requirements and limits for certain loans. (a) Not less than fifty per cent of the amount of loans and extensions of credit made by a savings bank shall be in loans and extensions of credit secured by real estate.

(b) The aggregate amount loaned by any savings bank for the following types of loans, whether secured or unsecured, shall not exceed the following limits:

(1) Commercial loans: fifteen per cent of the savings bank's total assets. For purposes of this section "commercial loan" means any loan primarily for business, corporate, commercial, or agricultural purposes where the savings bank substantially relies on the borrower's general credit standing for repayment of the loan and, if the loan is secured by real property, does not primarily rely on the value of or income or projected income from the security for repayment of the loan; and

(2) Education loans: ten per cent of the savings bank's total assets. For purposes of this section, "education loan" means any loan the proceeds of which are used to pay for tuition, fees, books, and other expenses related to primary, secondary, vocational and undergraduate and postgraduate college or university education.

(c) A savings bank may reclassify or apportion a loan from one category to another in this section.

§412:6-303 Limitations on loans and extensions of credit to one borrower. (a) No savings bank shall permit a person to become indebted or liable to it, either directly or indirectly, on loans and extensions of credit, in a total amount outstanding at any one time in excess of twenty per cent of the capital and surplus of the savings bank.

(b) This section applies to all loans and extensions of credit made by a savings bank and its subsidiaries. It does not apply to loans and extensions of credit made by a savings bank or its subsidiaries to its affiliates or subsidiaries.

(c) The limitations set forth in this section shall not apply to:

(3)[1] Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit;

(4) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the savings bank serving as the lender; and

(5) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable credit sales contracts which carry a partial recourse endorsement or limited guarantee by the person transferring the credit sales contract, if the savings bank's respective file or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the savings bank certifies in writing that the savings bank is relying primarily upon the responsibility of each maker for payment of such credit sales contract and not upon any partial recourse endorsement or limited guarantee by the transferor. Under these circumstances, such credit sales contract will be considered a loan and extension of credit to the maker of the credit sales contract rather than the seller of the credit sales contract.

(d) In computing the total loans and extensions of credit made by a savings bank to any person, all loans and extensions of credit by the savings bank to the

person and to any partnership, joint venture or unincorporated association of which the person is a partner or a member shall be included unless the person is a limited partner, but not a general partner, in a limited partnership, or unless the person is a partner in a limited or general partnership, or a member of a joint venture or unincorporated association, if such partner or member, by law, by the terms of the partnership, joint venture or membership agreement, or by the terms of an agreement with the savings bank, is not to be held liable to the savings bank for the debts of the partnership, joint venture or association. In computing the total loans and extensions or credit made by a savings bank to any firm, partnership, joint venture or unincorporated association, all loans and extensions of credit to its individual partners or members shall be included unless such individual partner is a limited partner, but not a general partner, in a limited partnership, or unless such individual partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the savings bank for the debts of the partnership, joint venture or association.

(e) Alternatively, a savings bank may, with the prior approval of the commissioner, comply with the lending limits applicable to national banking association, as and to the same extent it would, at the time, be so required by federal law or regulation if it were a national banking association. In monitoring a savings bank's compliance with the national banking association lending limits, the commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and opinions interpreting the national banking association lending limits and will regard them as strong evidence of safe and sound banking practices.

§412:6-304 Loans and extensions of credit to executive officers, directors, principal shareholders and affiliates. No savings bank shall make any loan or extension of credit in violation of section 18(j) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j).

§412:6-305 General requirement for investments. A savings bank shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:6-306 Permitted investments. (a) To the extent specified herein, a savings bank may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution

Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

(3) Quasi-United States governmental institutions including without limitation, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings bank's capital and surplus.

(b) To the extent specified herein, a savings bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a savings bank may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a savings bank shall not exceed twenty per cent of the savings bank's capital and surplus.

(d) To the extent specified herein, a savings bank may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a savings bank under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the savings bank's capital and surplus.

(e) To the extent specified herein, a savings bank may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interest, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the savings bank in its prudent judgment, which may be based in part upon estimates which it believes to be reliable. Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a savings bank under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the savings bank's capital and surplus.

(f) To the extent specified herein, a savings bank may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the savings bank is carried on, including its offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the savings bank's business, including but not limited to parking facilities, data processing centers,

and real property held for future use where the savings bank in good faith expects to utilize the property as its premises; provided, if the savings bank ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed seventy-five per cent of the savings bank's capital and surplus;

(2) Personal property used in or necessary to the accommodation of the savings bank's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The savings bank's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed twenty-five per cent of the savings bank's capital and surplus;

(3) Personal and real property which the savings bank acquires for the purpose of leasing to its subsidiaries and affiliates;

(4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts, or as may be purchased by or conveyed to the savings bank in satisfaction of or on account of debts previously contracted in the course of its business when such property was held as security by the savings bank; and

(5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a savings bank pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not without the written consent of the commissioner, be considered a part of the assets of the savings bank after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a savings bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the savings bank within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any savings bank acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from the assets, and when any loss impairs the capital and surplus of the savings bank the impairment shall be made good in the manner provided in this chapter.

(g) A savings bank may own or control the capital stock:

(1) Of operating subsidiaries as set forth in this article;

(2) Of a corporation organized and existing for the ownership of real or personal property used or which the savings bank in good faith expects to be used in the savings bank's business;

(3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;

(4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;

(5) Of service corporations as set forth in this article;

(6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner; and

(7) Of a captive insurance or association captive insurance company incorporated under the laws of the United States, or any state or territory thereof or the District of Columbia.

§412:6-307 Deposits made by savings banks. A savings bank may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the savings bank's capital and surplus, unless otherwise permitted by federal law. In this section "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

ARTICLE 7. SAVINGS AND LOAN ASSOCIATIONS

PART I. GENERAL PROVISIONS

§412:7-100 Definition. In this article, "savings and loan association" means a corporation or mutual association which has the authority to operate as a savings and loan association under this chapter.

§412:7-101 Necessity for savings and loan association charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a savings and loan association is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term "savings and loan association," or the exercise of such other powers or privileges restricted to savings and loan associations under applicable law, unless it is a corporation incorporated in this State and has such a charter.

PART II. POWERS OF SAVINGS AND LOAN ASSOCIATIONS

§412:7-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a savings and loan association shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of a savings and loan association, and shall have all rights, powers and privileges of a corporation organized[1] the laws of this State including but not limited to the power to:

(1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;

(2) Borrow money from any source within or without the State;

(3) Enter into repurchase agreements;

(4) Buy and sell foreign currency; and

(5) Make investments as permitted under this article.

(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:7-201, a savings and loan association shall not:

(1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
(2) Own or control the capital stock of any other corporation after July 1, 1994;
(3) Deal in gold bullion, except a savings and loan association may buy and sell gold coins minted by the United States Treasury; or
(4) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:7-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal savings and loan association under any federal statute, rule, regulation, interpretation or court decision.

(b) Any savings and loan association desiring to acquire any federal power shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other savings and loan associations may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:
(1) That the savings and loan association has violated any conditions imposed in connection with the grant of power; or
(2) The savings and loan association has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsections (d) or (e) of this section shall be taken only after the commissioner has given the savings and loan association notice of the proposed action and an opportunity to be heard.

§412:7-202 Membership in federal home loan bank. Any savings and loan association may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar system of federal home loan banks established by Congress, and may purchase and

hold the shares of such federal home loan bank. The savings and loan association may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the savings and loan association and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:7-203 Service corporations. (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings and loan associations or savings banks.

(b) Subject to the approval of the commissioner, a savings and loan association may form and own a service corporation only if the institution or institutions participating in the formation of the corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings and loan association may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings and loan association's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (1) the supervision of the commissioner; (2) examination pursuant to this section; and (3) such other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings and loan association in such corporation and whether the activities of the corporation pose a significant risk of loss to the parent savings and loan association. The corporation shall pay the entire cost of such examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings and loan association and such other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a savings and loan association's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings and loan association: (1) the improper activity shall be discontinued; or (2) the savings and loan association shall divest itself of its ownership or investment in the service corporation. The service corporation or the savings and loan association may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:7-204 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:7-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings and loan association.

(b) An operating subsidiary may engage in activities which are authorized for a savings and loan association or which are usual or incidental to the business of a savings and loan association.

(c) No savings and loan association may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the savings and loan association's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the saving and loan association's capital and surplus; provided further, that the savings and loan association shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings and loan association shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings and loan association and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:7-303.

(d) The savings and loan association shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

(1) The name and date for commencement of operations;
(2) The specific location;
(3) The activities and nature of business;
(4) The ownership, amount and nature of the investment; and
(5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The savings and loan association shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings and loan association shall be maintained independently of the accounts of all of the savings and loan association's other operating subsidiaries and independently of the accounts of the savings and loan association itself. At least at the end of every quarter of its fiscal year the savings and loan association shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

PART III. LOANS AND INVESTMENTS

§412:7-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all savings and loan associations. A savings and loan association may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:7-301 General requirements for loans. A savings and loan association shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:7-302 Requirements and limits for certain loans. (a) Not less than sixty per cent of the amount of loans and extensions of credit made by a savings and loan association shall be in loans and extensions of credit secured by real estate.

(b) The aggregate amount loaned by any savings and loan association for the following types of loans, whether secured or unsecured, shall not exceed the following limits:

(1) Commercial loans: twelve and one-half per cent of the savings and loan association's total assets. For purposes of this section "commercial loan" means any loan primarily for business, corporate, commercial, or agricultural purposes where the savings and loan association substantially relies on the borrower's general credit standing for repayment of the loan and, if the loan is secured by real property, does not primarily rely on the value of or income or projected income from the security for repayment of the loan;

(2) Education loans: five per cent of the savings and loan association's total assets. For purposes of this section, "education loan" means any loan the proceeds of which are used to pay for tuition, fees, books, and other expenses related to primary, secondary, vocational and undergraduate and postgraduate college or university education;

(3) Unsecured construction loans: five per cent of the savings and loan association's total assets. For purposes of this section, "unsecured construction loan" means any loan to provide financing for what is expected to be residential real estate and where the savings and loan association relies primarily on the borrower's general credit and projected future income, if any, from such completed construction.

(c) A savings and loan association may reclassify or apportion a loan from one category to another in this section.

§412:7-303 Limitations on loans and extensions of credit to one borrower. A savings and loan association shall comply with the lending limitations with respect to one borrower contained in section 5u of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C., §1464u.

§412:7-304 Loans and extensions of credit to executive officers, directors, principal shareholders and affiliates. No savings and loan association shall make any loan or extension of credit in violation of section 11 of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C., §1468.

§412:7-305 General requirement for investments. A savings and loan association shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:7-306 Permitted investments. (a) To the extent specified herein, a savings and loan association may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas

Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

(3) Quasi-United States governmental institutions including without limitation, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(b) To the extent specified herein, a savings and loan association may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a savings and loan association may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a savings and loan association shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(d) To the extent specified herein, a savings and loan association may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a savings and loan association under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(e) To the extent specified herein, a savings and loan association may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the savings and loan association in its prudent judgment, which may be based in

part upon estimates which it believes to be reliable. Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a savings and loan association under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(f) To the extent specified herein, a savings and loan association may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the savings and loan association is carried on, including its offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the savings and loan association's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the savings and loan association in good faith expects to utilize the property as its premises; provided, if the savings and loan association ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed seventy-five per cent of the savings and loan association's capital and surplus;

(2) Personal property used in or necessary to the accommodation of the savings and loan association's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The savings and loan association's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed twenty-five per cent of the savings and loan association's capital and surplus;

(3) Personal and real property which the savings and loan association acquires for the purpose of leasing to its subsidiaries and affiliates;

(4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts, or as may be purchased by or conveyed to the savings and loan association in satisfaction of or on account of debts previously contracted in the course of its business when such property was held as security by the savings and loan association; and

(5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a savings and loan association pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the savings and loan association after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a savings and loan association pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the savings and loan association within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any savings and loan association acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the savings and

loan association the impairment shall be made good in the manner provided in this chapter.

(g) A savings and loan association may own or control the capital stock:

(1) Of operating subsidiaries as set forth in this article;

(2) Of a corporation organized and existing for the ownership of real or personal property used or which the savings and loan association in good faith expects to be used in the savings and loan association's business;

(3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;

(4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;

(5) Of service corporations as set forth in this article;

(6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner; and

(7) Of a captive insurance or association captive insurance company incorporated under the laws of the United States, or any state or territory thereof or District of Columbia.

§412:7-307 Deposits made by savings and loan associations. A savings and loan association may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the savings and loan association's capital and surplus, unless otherwise permitted by federal law. In this section "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

PART IV. MANAGEMENT OF MUTUAL SAVINGS AND LOAN ASSOCIATIONS

§412:7-400 Applicability of part. This part shall govern the management of all existing mutual savings and loan associations.

§412:7-401 "Mutual savings and loan association" defined. A "mutual savings and loan association" means a savings and loan association in which the earnings and net worth of the institution inure to the ultimate benefit of the depositors or members. A mutual savings and loan association cannot issue capital stock.

§412:7-402 No further mutual savings and loan associations; applicability of chapter. From and after the effective date of this chapter, new mutual savings and loan associations may no longer be established, and once an existing mutual savings and loan association ceases to operate as such, it may not thereafter operate as a mutual savings and loan association. The exceptions to this prohibition are:

(1) A mutual savings and loan association created by the commissioner as part of a supervisory transaction; or
(2) A mutual savings and loan association which was prior to its formation a mutual holding company owning not less than fifty per cent of a Hawaii stock savings and loan association or savings bank.

§412:7-403 General applicability of laws. The requirements imposed on and the power and authority given to savings and loan associations that are Hawaii financial institutions and to their directors, officers, employees and agents concerning the management and operation thereof shall apply equally to mutual savings and loan associations, except as otherwise provided in this part.

§412:7-404 Articles of association; bylaws. A mutual savings and loan association shall be governed by its articles of association and bylaws, true copies of which shall be filed with the commissioner.

§412:7-405 Membership. (a) All holders of a mutual savings and loan association's deposit accounts and borrowers, whether secured or unsecured, shall be members of the mutual savings and loan association.

(b) An account or loan in the name of two or more persons shall not confer greater voting or other membership rights than if such account or loan were in the name of one person.

§412:7-406 Meetings. A mutual savings and loan association shall hold meetings of its members when and as required by its bylaws, or by any law applicable to financial institutions. A quorum for the conduct of business at any regular or special meeting of its members shall be the presence of at least two members, and when not inconsistent with law, a majority of all votes cast at any duly constituted meeting shall determine any question.

§412:7-407 Voting. (a) The bylaws of the association shall fix the eligibility of members who shall be entitled to vote in person or by proxy at any regular or special meeting.

(b) Each member, other than a borrower, shall be entitled to one vote for every $100 or fraction thereof of the withdrawal value of such member's account, regardless of the number of deposit accounts such member has at the association. Each borrower shall have one vote in addition to any votes such member may have otherwise. Notwithstanding the foregoing, no member shall be entitled to more than one thousand votes.

(c) Account holders and borrowers who are members shall not be considered separate classes of stock for purposes of any law requiring the vote of each class of stock in corporations with more than one class of stock.

(d) Voting may be by proxy, provided that all proxies must be in writing and shall be signed by the member or the member's attorney-in-fact, and shall continue in force from year to year unless revoked in a writing sent to the secretary of the association. Nothing in this section shall prevent a member from voting in person at any meeting.

§412:7-408 Conversion to stock form. (a) With the approval of the commissioner, a mutual savings and loan association may convert to a stock form, provided the conversion procedure is substantially similar to the procedure authorized for conversion of a federal mutual savings association into a federal stock savings association. The commissioner may waive or depart from any of the

foregoing procedures or requirements when deemed expedient or prudent by the commissioner.

(b) A mutual savings and loan association may also, when converting to a stock form, convert directly from a mutual savings and loan association to any other form of financial institution by complying with all applicable provisions of article 3, part VI of this chapter for conversion to any other form of financial institution or with federal law.

(c) The association's board of directors shall adopt, by a two-third vote of all members of the board, a conversion plan, the provisions of which shall comply with the requirements of State and federal laws, rules and regulations applicable to such mutual to stock conversions.

(d) Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the commissioner for approval or disapproval. If the commissioner disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished to the association. The procedures found in article 3, part VI of this chapter shall be followed by the commissioner when approving or disapproving a conversion plan.

(e) The conversion plan shall be presented to the members who are eligible to vote for its approval at an annual or special meeting of the members called for that purpose. A majority of the votes of the members of the association present in person or by proxy shall be required to approve such conversion plan. A member's right to oppose or dissent from a conversion from mutual form to stock form shall be limited to the votes such member may cast in opposition to such conversion. This section shall not in any way diminish a member's right to purchase stock of the converting association or the member's rights as a depositor or as a borrower or as a beneficiary of a liquidation account and not as a member.

(f) Upon approval by the members of the association, two executive officers shall submit the approved conversion plan to the commissioner, together with all necessary amendments to the association's articles of incorporation and bylaws, each certified by such officers, and a certification by such officers satisfactory to the commissioner that all applicable requirements of federal law, if any, have been complied with by the converting association. Unless a later date is specified in the conversion plan, the conversion shall become effective upon the issuance of a stock charter to the converting savings and loan association and the former mutual charter of the converting mutual savings and loan association shall terminate automatically.

(g) A Hawaii financial institution or federal financial institution resulting from a stock conversion pursuant to this part shall be deemed to be continuing the same business of the converting institution carried on prior to the conversion with all of the property, rights, powers and duties of the converting institution. No assignment, deed, conveyance or other instrument of transfer need be executed in order for the converting institution to maintain the title, rights and powers held by the converting institution. The rights of any creditor or obligee of a converting institution prior to the conversion shall not be affected by such stock conversion. Without limitation of the foregoing, section 412:3-610 shall apply upon conversion.

ARTICLE 8. TRUST COMPANIES

PART I. GENERAL PROVISIONS

§412:8-100 Applicability of article. This article shall apply to all financial institutions chartered under this article as trust companies or otherwise authorized to engage in the trust business under this chapter, whether the business of such

institution is carried on in this State or elsewhere. The powers and duties of trustees imposed by case law shall not be affected by this chapter unless a provision hereof conflicts with such case law, in which event this chapter shall control.

§412:8-101 Definitions. In this article:

"Client" means a customer of a trust company, including without limitation a settlor or beneficiary with a vested interest, the grantor of a power, or the principal in an agency relationship. When context permits, both the settlor and the beneficiary may be clients at the same time.

"Trust company" means a Hawaii financial institution which has been permitted to use the term "trust company" as part of its name, or a subsidiary, trust division or department of a bank that is a Hawaii financial institution, which engages primarily in the business of acting as a trustee, personal representative, guardian, agent, and other fiduciary, either by court appointment or by agreement.

"Trust holding company" means a financial institution holding company, other than a bank or a bank holding company which controls a trust company or another trust holding company. A bank which is authorized to engage in the business of a trust company through a subsidiary, division or department of the bank is not a trust holding company if its trust business is solely through such subsidiary, division or department.

§412:8-102 Necessity for trust company charter. No person shall engage in the business of a trust company in this State or control any other person engaging in the business of a trust company in this State, except through a trust company incorporated in this State and chartered under this part or through a trust division, department, or subsidiary of a bank, pursuant to article 5 of this chapter.

§412:8-103 Authority to serve as trustee. Unless chartered as a trust company under this chapter or otherwise specifically authorized by the laws of this State, no person, except an individual acting as a co-trustee, shall hold itself out to the general public as being available to serve as a trustee or trust company, whether or not for compensation. No person shall use the terms "trust company" as part of its name unless chartered as a trust company pursuant to this chapter.

PART II. POWERS OF TRUST COMPANIES

§412:8-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a trust company shall have the fiduciary powers specified in section 412:8-201, such powers as are granted to trustees generally by law, such other powers usual and incidental to the business of a trust company, and all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

(1) Borrow money from any source within or without the State; provided that a trust company shall not pledge or encumber any client assets for the purpose of borrowing money for its own account or benefit;
(2) Enter into repurchase agreements; and
(3) Make investments as permitted under this article.

(b) Except as otherwise expressly authorized by this chapter, a trust company shall not:

(1) Issue drafts, bills of exchange, or letters of credit;
(2) Discount commercial paper;
(3) Solicit, accept or hold deposits;
(4) Engage in a general banking, savings bank or savings and loan association business;

(5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer; and

(6) Make any loans or extensions of credit to any person; except, a trust company may:

(A) Make loans to its affiliates not exceeding in the aggregate amount twenty per cent of the trust company's capital and surplus;

(B) Make loans to its clients for the sole purpose of preventing overdrafts in the client's account or accounts or securing repayment of overdrafts in the client's account or accounts. A trust company may charge interest on such advances, subject to chapter 478. A trust company shall have a lien on the assets in the client's account(s) for the amount of the advance or credit and interest; and

(C) Pay or advance premiums due and owing by any person to an insurance company, before the payment by the person; provided that the total amount of the payments and advances at any one time for the benefit of any one person shall not exceed two per cent of the capital and surplus of the trust company, and for the benefit of all such persons shall not exceed fifteen per cent of the capital and surplus of the trust company.

§412:8-201 Fiduciary powers. Every trust company shall have the power and authority to serve as a trustee, personal representative, guardian of the property, assignee for the benefit of others, or receiver, subject to the duties imposed by the instrument or by law. As used herein, the term "instrument" means any trust agreement, declaration, or other agreement, any valid will, or any court order or decree in any probate, guardianship, or receivership. Pursuant thereto, a trust company is authorized and empowered to exercise powers as provided by law, including, but not limited to:

(1) Perform such acts as may be prudent, consistent with, and reasonably necessary to carry out the legitimate purposes of such instrument;

(2) Administer, fulfill, and discharge all lawful duties imposed by instrument or by law, for such remuneration as may be agreed upon or provided by law;

(3) Acquire principal and income on behalf of the estate administered by the trust company, including without limitation real property, insurance proceeds, rents, interest, dividends, mortgages, bonds, bills, notes, and securities;

(4) Buy, sell, issue, negotiate, register, transfer, or countersign certificates of stock, bonds, or other obligations of any corporation, association, or municipality;

(5) Lease, purchase, hold, and convey real and personal property to the extent authorized by the instrument or by law, or consistent with the purposes thereof; and

(6) Execute and issue on behalf of the estate any documents necessary to the prudent administration thereof, including without limitation any receipts, certificates, papers, and contracts which shall be signed by an appropriate trust officer designated by the trust company.

§412:8-202 Acting as agent. (a) A trust company may act as an agent in behalf of a principal in the transaction of any business or in the management of any

property, real, personal or mixed, with such powers as the trust company may exercise under sections 412:8-200 and 412:8-201; provided, that its duties as such agent and the terms and conditions of the agency or power are set forth either specifically or generally in a written memorandum signed by the principal.

(b) Every trust company undertaking or continuing to act as agent for any principal pursuant to this section shall mail or deliver to the principal or any authorized representative of the principal at stated intervals, not less frequently than once a year, and at the termination of the agency, a written statement of account setting forth:

(1) All receipts and disbursements since the inception of the agency or the last previous account rendered under this paragraph, as the case may be, in such detail as will identify all properties purchased or sold during the period;

(2) The credit or debit balance, as the case may be, as of the final date of the accounting period; and

(3) A complete inventory of all properties, whether real, personal, or mixed, title to or custody or safekeeping of which is then held by the trust company for the account of the principal. The account shall contain such segregation of principal and income as the principal in writing specifically requires.

(c) Unless previously barred by adjudication, consent or limitation, any claim against an agent for breach of fiduciary duty in connection with the agency relationship is barred as to any principal to whom the agent has mailed or delivered an annual or final accounting fully disclosing the matter in question unless a proceeding to assert the claim is commenced within two years after the annual or final accounting has been mailed or delivered to the principal. In any event and notwithstanding lack of full disclosure, an agent who has mailed or delivered an annual or final accounting to the principal and has informed the principal of the location and availability of records for the principal's examination is protected after three years from the date such accounting was mailed or delivered.

(d) Every trust company shall have on hand at all times in actual money of the United States an amount equal to at least twelve per cent of all agency credit balances payable on demand and of accounts payable, plus at least five per cent of all agency credit balances payable on time; provided that such reserve may be deposited payable on demand in banks and other trust companies approved by the commissioner or may be cash in the vaults of the trust company.

(e) The requirements of this section shall not apply to occasional or isolated acts performed under special instructions or at the special request of a principal who is not a general or regular client of the trust company.

§412:8-203 Use of nominees. A trust company acting in a fiduciary or agency capacity, and any fiduciary acting as a co-fiduciary with a trust company, may cause any stock, bond, or other security held in such capacity to be registered or held in the name of a nominee or nominees of the trust company or in the name of the trust company, without disclosing such fiduciary or agency capacity unless expressly otherwise provided by the instrument creating the fiduciary or agency relationship; provided, that the trust company:

(1) Shall permit the nominee to have possession of or access to the stock, bond, or other security;

(2) Shall clearly show on its records the name of the nominee and that the security is held by such person; and

(3) Shall be responsible for any loss resulting from the act of the nominee. No liability for any loss occasioned by the acts of the trust company or its nominee or nominees, with respect to any stock, bond, or other

security so registered or held, shall be imposed upon any corporation the stock, bond, or other security of which is registered in the name of the trust company or the nominee or nominees, or upon the transfer agent or registrar of the corporation.

§412:8-204 Agreement between trust companies and banks. A trust company granted full trust powers may contract by written agreement with any bank or national banking association to carry on trust services in the bank's or national banking association's name and for its account at one or more of the banking offices of a bank or national banking association. A bank may permit by written agreement any trust company having its principal office in this State and exercising full trust powers to carry on trust services at one or more of its banking offices but in the name and for the account of the trust company. Any agreement provided for in this section, including any lease, or modification or extension thereof, shall not be effective as to any trust company until and unless it is approved in writing by the commissioner. The commissioner may approve or disapprove the agreement upon consideration of the sufficiency of the capital and surplus of the trust company and the bank, the need for trust services and other facts or circumstances which the commissioner may deem appropriate.

PART III. INVESTMENT OF TRUST COMPANY ASSETS

§412:8-300 Applicability of part. This part sets forth the requirements and restrictions for investments made by all trust companies. No trust company shall invest its assets except as may be permitted by this part and as may be provided elsewhere in this chapter.

§412:8-301 Permitted investments of capital and surplus. (a) To the extent specified herein, a trust company may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

(3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European In-

vestment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the trust company's capital and surplus.

(b) To the extent specified herein, a trust company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a trust company may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a trust company shall not exceed twenty per cent of the trust company's capital and surplus.

(d) To the extent specified herein, a trust company may invest its own assets in capital stock, notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a trust company under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the trust company's capital and surplus.

(e) To the extent specified herein, a trust company may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the trust company in its prudent judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a trust company under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the trust company's capital and surplus.

(f) To the extent specified herein, a trust company may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the trust company is carried on, including its corporate offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the trust company's business, including but not limited to parking facilities, data processing centers, and real property held for future corporate use where the trust company in good faith expects to utilize the property as trust company premises; provided, if the trust company ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property

shall not without the approval of the commissioner exceed seventy-five per cent of the trust company's capital and surplus;

(2) Personal property used in or necessary to the accommodation of the trust company's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The trust company's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the trust company's capital and surplus.

Any trust company acquiring any real property in any manner other than provided in this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the trust company the impairment shall be made good in the manner provided in this chapter.

§412:8-302 Deposits made by trust companies. A trust company may deposit any of its funds with a depository institution.

PART IV. INVESTMENT OF FIDUCIARY ASSETS

§412:8-400 General requirements. Within the limits of the standard of a prudent investor, a trust company as fiduciary, custodian, agent, personal representative, or otherwise may acquire and retain every kind of property, real, personal, or mixed and every kind of investment, including without limitation bonds, debentures, and other corporate obligations, and corporate stocks, preferred or common, and securities of any open-end or closed-end management type investment company or unit investment trust registered under the federal Investment Company Act of 1940, as from time to time amended, and may retain property properly acquired without limitation as to time and without regard to its suitability for original purchase. Notwithstanding any other law, and unless expressly prohibited by the governing instrument, a trust company may invest fiduciary funds and other funds over which it has investment discretion in the securities of an investment company or trust to which the trust company, or an affiliate of the trust company, is providing services as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and is receiving reasonable remuneration for the services. Nothing herein shall authorize a departure from or variation of, the express terms or limitations set forth in the instrument creating the fiduciary relationship, but the terms "legal investment" or "authorized investment", or words of similar import, means any investment conforming to the foregoing standard.

§412:8-401 Trust funds awaiting investment. (a) Except as may be otherwise provided by the terms of the trust, a trust company holding trust funds awaiting investment, distribution, or other use shall place any funds in excess of $100 or an amount equal to the aggregate sum it holds in trust in an interest-bearing account within a reasonable time and such interest shall be credited to the account of the trust whose funds are awaiting investment, distribution, or other use.

(b) This section shall not apply to funds held by the trust company as personal representative or guardian.

(c) The trust company shall be accountable for no other interest on such funds except as required by this section.

(d) Nothing in this section shall relieve the trust company from the obligation to invest all funds held in trust by it as required by law or the terms of the trust instrument.

§412:8-402 Common trust fund investments. (a) As used in this chapter the term "common trust funds" shall have the same meaning as under Section 584 of the Internal Revenue Code of 1986, as the same may be hereafter amended, and shall also include any other type of collective investment fund which is exempt from federal income taxation under any other provision or regulation of the Code, or rule issued by the Internal Revenue Service or Department of Treasury.

(b) A trust company may establish one or more common trust funds for the collective investment and reinvestment of moneys contributed thereto by it as fiduciary, and by it and others as co-fiduciaries; and the trust company and its co-fiduciaries may invest funds held as trustee, guardian, or in any other fiduciary capacity in which it or they shall be authorized to invest funds, in any common trust fund, if the investment is not expressly forbidden by the instrument, decree, or order creating the fiduciary relationship. Common trust funds may be invested and reinvested in those investments in which trust companies are authorized to invest trust funds.

(c) The statutes, rules, regulations, interpretations or court decisions governing common trust funds of national banking associations, as they may be amended from time to time, shall also govern common trust funds of a trust company.

§412:8-403 Disclosure of fees. All fees and commissions charged by a trust company to its clients or the manner by which fees and commissions shall be determined shall be disclosed in writing prior to rendering the services for which the fees or commissions are charged.

ARTICLE 9. FINANCIAL SERVICES LOAN COMPANIES

PART I. GENERAL PROVISIONS

§412:9-100 Definitions. In this article:

"Consumer loan" means a loan made to a natural person primarily for personal, family, or household purposes:

(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) Which is secured by real property, or by personal property used or expected to be used as the borrower's principal dwelling.

"Depository financial services loan company" means a financial services loan company that is authorized to accept deposits by this chapter and whose deposits are insured by the Federal Deposit Insurance Corporation.

"Financial services loan company" means a corporation which is engaged in making loans where the interest charged, contracted for or received is in excess of rates permitted by law other than this article. No person may use the term financial services loan company or hold itself out as engaging in the business of a financial services loan company unless licensed or authorized in accordance with this chapter. Financial services loan companies were previously known as "industrial loan companies".

"Nondepository financial services loan company" means a financial services loan company that is not authorized to accept deposits.

"Open-end credit" means a loan by a financial services loan company under a plan which:

(1) The financial services loan company reasonably contemplates repeated transactions;

(2) The financial services loan company may impose a finance charge from time to time on an outstanding unpaid balance; and
(3) The amount of credit that may be extended to the borrower during the term of the plan (up to any limit set by the financial services loan company) is generally made available to the extent that any outstanding balance is repaid.

"Principal" or "principal amount" means the face amount of the note or other form of contract.

"Service corporation" means a corporation whose stock is owned entirely by one or more depository financial services loan companies.

§412:9-101 Necessity for financial services loan company license. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for or received is in excess of rates permitted by law other than this article, the use of the term "financial services loan company", or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license.

§412:9-102 Annual license fee. On or before December 31 of each year, each financial services loan company shall pay to the commissioner an annual license fee of $50 for each license that it holds for the ensuing year. A financial services loan company whose application for a license was approved in December may pay to the commissioner the first annual license fee of $50 for the ensuing year on or before the expiration of thirty days after receiving notice of the approval of the financial services loan company's application.

PART II. POWERS OF FINANCIAL SERVICES LOAN COMPANIES

§412:9-200 General powers. Except as expressly prohibited or limited by this chapter, a financial services loan company shall have the power to make loans where the interest charged, contracted for or received is in excess of rates permitted by law other than this article, engage in other activities which are usual or incidental to the business for which it is licensed, and shall have all rights, powers and privileges of a corporation organized under the laws of this State, including but not limited to, the power to:

(1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
(2) Borrow money from any source within or without this State;
(3) Charge or retain a fee for the originating, selling, brokering, or servicing of loans and extensions of credit;
(4) Discount, purchase, or acquire loans, including but not limited to notes, credit sales contracts, mortgage loans, or other instruments;
(5) Become the legal or beneficial owner of tangible personal property and fixtures and such other real property interests as shall be incidental thereto, to lease such property, to obtain an assignment of a lessor's interest in a lease of the property, and to incur obligations incidental to the financial services loan company's position as the legal or beneficial owner and the lessor of the property;
(6) Sell or refer credit related insurance products, and collect premiums or fees for the sale or referral thereof, including, but not limited to, credit life insurance, credit disability insurance, accident and health or

sickness insurance, involuntary unemployment insurance, personal property insurance and mortgage protection insurance; and

(7) Make investments as permitted under this article.

§412:9-201 Powers that require regulatory approval. (a) A financial services loan company may sell or refer the following products and services and collect premiums or fees for the sale or referral thereof only after obtaining the approval of the commissioner:

(1) Accidental death and dismemberment insurance, whether or not connected with a loan, provided that the purchase of such insurance must be voluntary and not required as a condition of a loan. The approval of the insurance commissioner must also be obtained prior to the sale of any insurance product; and

(2) Auto club memberships and home and automobile security plans, whether or not connected with a loan and extension of credit, provided that the purchase of any such service or product must be voluntary and not required as a condition of a loan.

(b) In approving any request to sell or refer the products and services in subsection (a), the commissioner may impose such conditions and restrictions that are in the public interest.

§412:9-202 Prohibitions. Except as otherwise expressly authorized by this chapter, a financial services loan company shall not:

(1) Employ its funds, directly or indirectly, in trade or commerce by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;

(2) Issue commercial letters of credit;

(3) Sell real estate, securities, or insurance; or

(4) Engage in any activity requiring a charter as a trust company under article 8 of this chapter.

PART III. LOANS AND EXTENSIONS OF CREDIT

§412:9-300 General requirements for loans and extensions of credit. A financial services loan company shall make loans and extensions of credit that are consistent with prudent lending practices, and in compliance with all applicable federal and State laws.

§412:9-301 Interest computation methods. A financial services loan company may charge, contract for, and receive interest on loans on a precomputed basis or a simple interest basis.

(1) Precomputed loans are loans where interest is paid or deducted in advance at the inception of the loans. The two types of precomputed loans, discount and add-on, are as follows:

(A) Under the discount method, interest is computed on the principal amount of the loan for the full term of the loan as though the principal amount were to remain outstanding and unpaid for the full term of the loan. The interest and other authorized and permitted charges may be deducted from the principal amount at the time the loan is made and may be retained by the financial services loan company and applied (in the case of other charges) for the purposes authorized by this article. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required

on the loan and the borrower does not receive the full principal amount, but only the balance thereof after the deductions;

(B) Under the add-on method, interest is computed on the amount to be actually received by the borrower, as though the amount were to remain outstanding and unpaid for the full term of the loan. Interest and other authorized and permitted charges may be added to the amount to be actually received by the borrower, and the total amount produced by the addition may then be constituted the principal amount of the loan. The amount of the interest and other authorized and permitted charges so added may then be deducted from the principal amount and retained by the financial services loan company at the time the loan is made. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required on the loan and that the amount received by the borrower is less than the principal amount by the amount of the interest and other charges;

(2) Simple interest loans are loans on which interest is computed on the principal balance remaining unpaid from time to time. "Principal balance remaining unpaid" is defined as the original principal amount less payments applied to reduce the original principal amount.

§412:9-302 Interest rates. (a) A financial services loan company shall have the right to charge, contract for, and receive interest, fees and other charges on loans, as permitted by chapter 478, or as otherwise permitted by law.

(b) In addition to and without limiting the authority granted by subsection (a), for any loan on which interest is calculated under the authority of section 412:9-301, a financial services loan company may charge, contract for, and receive interest at any rate which does not exceed the maximum rate allowed by this section:

(1) For precomputed loans, interest that is paid or deducted in advance shall not exceed fourteen per cent a year for the first eighteen months or portion thereof, plus ten and one-half per cent a year for the next twelve months or portion thereof, plus seven per cent a year for the next twelve months or portion thereof, plus four per cent a year for the last six months or portion thereof, of the term of the loan. The maximum term of a precomputed loan where the preceding rates are charged will be forty-eight months. If the term of a precomputed loan exceeds forty-eight months, the financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" shall have the same meaning as under the Truth in Lending Act.

(2) For simple interest loans, a financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" as used in this subsection shall have the same meaning as under the Truth in Lending Act.

The rate in this subsection shall be applicable to any simple interest loan, whether or not the Truth in Lending Act applies to the transaction, notwithstanding the fixed or variable manner in which interest or a finance charge may be computed under the loan, and whether or not the contract uses the terms "interest" or "annual percentage rate" or "finance charge" or any combination of such terms.

For rate computation purposes the financial services loan company conclusively shall be presumed to have given all disclosures in accordance with the terms of the loan that are contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) On maturity of a loan, the rate of interest on the unpaid principal balance of the loan shall be twenty-four per cent a year, unless a lesser rate is specified in the note or other form of contract signed by the borrower as an after-maturity interest rate.

(d) Any open-end loan account that is also a "credit card agreement" as defined in section 478-1 shall be subject to the rate limitations in section 478-4 rather than the rate limitations in this article.

§412:9-303 Effect of excessive interest. If a greater rate of interest than that permitted under this article is contracted for in any loan under this article, the loan shall not, by reason thereof, be void. But, if in any action on the loan, proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the financial services loan company shall only recover the amount actually received by the borrower in cash, credit or the equivalent thereof plus the charges, if any, which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower. The borrower shall only recover costs. If interest has been paid, judgment shall be for the recoverable amount less the amount of interest paid. Sections 478-5 and 478-6 shall not apply to loans made under this article by financial services loan companies.

§412:9-304 Consumer loan charges. Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article:

(1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;

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

(A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty

may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the maximum interest rate permissible for the consumer loan by law on the amount prepaid;

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

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

(3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, which is due on a particular date and which is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;

(4) Non-refundable discount, points, loan fees, and loan origination charges, provided that:

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

(B) The non-refundable discount, points, loan fees and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) only if the consumer loan is secured by an interest in real property. Provided further, that except for open-end loans, the non-refundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made;

The non-refundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid or on the date the consumer loan is made and shall not be subject to refund on prepayment of the consumer loan;

(5) Fees, charges and expenses reasonably related to the consumer loan transaction which are retained by the financial services loan company, provided that such fees are bona fide and reasonable and not unfair or deceptive. Such fees are limited to notary fees, appraisal fees, appraisal review fees, and any other fees as adopted by the commissioner pursuant to rule;

(6) Fees, charges and expenses reasonably related to the consumer loan transaction which are actually paid to third parties, no portion of which inures to the benefit of the financial services loan company. Such fees, charges and expenses may include, but are not limited to,

charges for credit reports, actual taxes and fees charged by a governmental agency for recording, filing or entering of record any security agreements or instruments including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System; provided that the insurance premium shall not exceed $4, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default.

§412:9-305 Open-end consumer loans. Open-end consumer loans made under the authority of this article shall be subject to the following special restrictions:

(1) A financial services loan company shall not compound interest on any open-end consumer loan by adding any unpaid interest to the unpaid principal balance of the open-end loan. However, the unpaid principal balance may include charges other than interest and late charges;

(2) Regardless of the interest computation method used in each billing cycle under an open-end loan agreement, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower, and deducting all payments and other credits made or received that day;

(3) If credit life insurance or credit disability insurance is provided, the additional charge for the insurance shall be calculated in each billing cycle by applying the current monthly premium rate (which may be calculated daily), as approved by the insurance commissioner, to the entire outstanding balances, or to as much of the outstanding balances that the insurance covers, using the same method used for the calculation of loan interest. A financial services loan company shall not be obligated to advance to the insurer any premiums for the insurance on a borrower who is delinquent in making the required minimum payments on the loan if one or more of the payments is past due for ninety days or more. However, the financial services loan company shall advance to the insurer the amounts required to keep the insurance in force during the ninety-day period. The advanced amounts may be debited to the borrower's open-end account; and

(4) A financial services loan company may retain any security interest in real or personal property securing the open-end loan until the open-end loan is terminated.

§412:9-306 Refunds on prepayment of a precomputed loan. (a) A borrower shall be entitled to a refund of the unearned interest that has been paid in advance when a precomputed loan is paid in full or refinanced prior to maturity, or on which judgment has been obtained:

(1) The amount of the refund on a loan with an original term of sixty months or less shall be computed under a method no less favorable to the borrower than the Rule of 78ths method (also known as the Sum of the Digits method). The refund shall represent at least as great a proportion of the total finance charge as the sum of the periodical time balances, after the day of prepayment, bears to the sum of all the

periodical time balances under the schedule of payments in the loan agreement;

(2) If the original term of a precomputed loan exceeds sixty months, the amount of refund of unearned interest shall be equal to the difference between the total interest originally charged and the actuarially earned amount;

(3) Refunds on precomputed loans originated prior to the effective date of this Act shall be made in accordance with the terms of existing loan agreements, provided that the refund provision complied with applicable law at the consumer loan origination.

(b) No refund less than $1 need be made and the financial services loan company shall not be required to refund any portion of the unearned interest that has been paid in advance which results in a minimum interest retained on the precomputed loan of less than $15.

§412:9-307 Fraction of a month. In computing interest, late charges, or refunds for precomputed loans under sections 412:9-302, 412:9-304 and 412:9-306 any fraction of a month may be considered as a whole month.

§412:9-308 Repayment terms. Nothing in this article shall prohibit loans with a demand feature, including but not limited to a single payment demand loan.

§412:9-309 Assignments, sale or pledge of loans. Any loan made under this article may be assigned, sold, or pledged in whole or in part to any person. That person may charge, contract for, and receive interest on, and enforce the terms of, the loan to the same extent permitted except for the assignment, sale, or pledge; provided that no loan shall be assigned, sold or pledged to another person doing business in the State unless that other person is a financial institution or has the right to charge, contract for, or receive interest at the same interest rate and on the same terms as provided for in the loan, and if there is an assignment or sale, that loan is assigned or sold without recourse. Notwithstanding the foregoing, any financial services loan company may assign loans to a person or persons that are not financial institutions for purposes of collection of delinquent payments. That person or persons may enforce the terms of the loan to the same extent as the financial services loan company that originated the loan.

PART IV. DEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:9-400 Special powers of a depository financial services loan company. In addition to the powers granted in Parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power and privilege to:

(1) Solicit, accept and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts. Provided that a depository financial services loan company shall not solicit, accept or hold demand deposits or authorize a depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;

(2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is obtained. The financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a general agent, subagent or solicitor licensed pursuant to chapter 431. In approving any request to sell or refer fixed rate annu-

ities pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest;

(3) Issue stand-by letters of credit, if the written approval of the commissioner is obtained. In approving any request to issue stand-by letters of credit pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest. Any depository financial services loan company issuing stand-by letters of credit shall include those obligations in computing the total loans and extensions of credit to a person outstanding at any one time which are subject to the limitations in section 412:9-404; and

(4) Offer gifts, premiums, other considerations or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.

§412:9-401 Required reserve for a depository financial services loan company. (a) Every depository financial services loan company shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to seven per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term not exceeding one year, and five per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term of one year or more. The reserve shall not be pledged. The reserve requirement shall be determined as of the same calendar day in each calendar week and shall be based on the daily average of all outstanding deposits of the immediate preceding seven calendar days. During the succeeding seven calendar day period beginning with each determination date, the average daily balance of the reserve shall equal or exceed the reserve amount so determined. Determination of the reserve requirement shall be computed within two working days after the determination date.

(b) Cash reserves shall be limited to cash on hand, cash in federal reserve banks, federal home loan banks, and federally insured financial institutions, and direct obligations of the United States, this State or its counties. Cash reserves may be deposited in United States branches of non-United States banks, with the written approval of the commissioner. The cash reserve shall at all times be at least fifty per cent of the reserve required by this section.

(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and (a)(2) and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges. Not more than twenty-five per cent of the total reserve shall be held in securities listed on the New York or American stock exchanges.

(d) If the reserve or cash reserve portion of the reserve of any depository financial services loan company falls below the amount required by this section, the depository financial services loan company shall promptly take action to correct the deficiency. Upon discovery of any deficiency, the depository financial services loan company shall notify the commissioner of the deficiency and inform the commissioner of any action being taken to correct the deficiency. If the deficiency has not been corrected, the commissioner may in writing direct the depository financial services loan company to take action necessary to cure the deficiency.

§412:9-402 Membership in federal home loan bank. Any depository financial services loan company may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar systems of federal home loan banks established by Congress, and may purchase and hold the shares of such federal home loan bank. The depository financial services loan company may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however, that notwithstanding such membership the depository financial services loan company and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:9-403 Service corporations. Subject to the approval of the commissioner, one or more depository financial services loan companies, may form and own a service corporation only under the following conditions:

(1) The depository financial services loan company or companies participating in the formation of the service corporation are in and will remain in a safe and sound condition, and the depository financial services loan company's or companies' solvency will not be adversely affected by the formation or ownership of the service corporation;

(2) A depository financial service loan company may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed fifty per cent of the depository financial services loan company's capital and surplus;

(3) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (a) the supervision of the commissioner; (b) examination pursuant to this section; and (c) such other terms and conditions as the commissioner deems appropriate;

(4) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a depository financial services loan company in such service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent depository financial services loan company. The service corporation shall pay the entire cost of the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner;

(5) A service corporation may engage in any activity permitted to its parent depository financial services loan company and any other activity as the commissioner may approve;

(6) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures; and

(7) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a depository financial services loan company's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the depository financial services loan company: (a) the improper activity shall be discontinued; or (b) the deposi-

tory financial services loan company shall divest itself of its ownership or investment in the service corporation. The service corporation or the depository financial services loan company may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:9-404 Limitation on loans and extensions of credit to one borrower. (a) No depository financial services loan company shall permit a person to become indebted or liable to it, either directly or indirectly, on loans and extensions of credit in a total amount outstanding at any one time in excess of twenty per cent of the depository financial services loan company's capital and surplus; provided that such aggregate amount may be increased to one hundred per cent of the depository financial services loan company's capital and surplus if the loans and extensions of credit made to the person in excess of twenty per cent of the depository financial service loan company's capital and surplus are fully secured by real property as provided in section 412:9-405.

(b) The limitations set forth in this section shall not apply to:

(1) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the lending depository financial services loan company; and

(2) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit.

§412:9-405 Loans and extensions of credit fully secured by real property. (a) For loans and extensions of credit fully secured by real property other than unimproved raw land, a depository financial services loan company may advance, directly or indirectly, up to and including ninety-five per cent of the appraised value of the real property securing the loan and extension of credit. The principal amount of the loan and extension of credit shall be added together with the outstanding balances of all prior liens on the real property to determine the ninety-five per cent loan to value ratio.

(b) For loans and extensions of credit fully secured by mortgages on unimproved raw land, the maximum loan-to-value ratio shall not exceed seventy per cent of the appraised value of the unimproved raw land. Parcels of land with direct access by road and served by electric power shall not be deemed unimproved raw land.

§412:9-406 Appraisals required. (a) Depository financial services loan companies shall comply with the applicable appraisal requirements of the Federal Deposit Insurance Corporation, and, to the extent required by the Federal Deposit Insurance Act or the rules and regulations of the Federal Deposit Insurance Corporation, shall obtain an appraisal prepared by an appraiser licensed or certified by the State before making any loan and extension of credit in excess of $100,000 which is secured by real property.

(b) A depository financial services loan company may make loans and extensions of credit of $100,000 or less which are secured by improved real property using the most recent real property tax assessment value, provided that:

(1) The amount of the loan and extension of credit, including any prior liens shall not exceed seventy per cent of the tax assessed value of fee simple property, and sixty per cent of the tax assessed value of leasehold property; and

(2) The use of tax assessed values is made pursuant to a written loan policy which describes the conditions under which the tax assessment values may be used.

(c) The provisions of this section shall not prevent a depository financial services loan company from placing additional liens on any collateral in an abundance of caution or to secure the repayment of debt previously contracted for in good faith when the additional liens are necessary to further secure the payment of the debt and to save the depository financial services loan company from loss.

§412:9-407 Limits on transactions with affiliates, executive officers, directors or principal shareholders. No depository financial services loan company shall make any loan and extension of credit or engage in any transaction in violation of section 18j of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j) or sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act, 12 U.S.C. §§375a, 375b, 371c and 371c-1.

§412:9-408 General requirement for investments. (a) A depository financial services loan company shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and state law.

(b) The board of directors of a depository financial services loan company and any other person charged with the responsibility of investing the depository financial services loan company's assets shall exercise such reasonable diligence, discretion, judgment, and intelligence as would be expected of a prudent investor. Among other things, they shall not engage in speculative or unsound investments, and they shall at all times consider the probable safety as well as the probable income of the capital being invested.

(c) The board of directors shall establish written investment policies.

§412:9-409 Permitted investments. (a) To the extent specified herein, a depository financial services loan company may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution

Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority and the United States Postal Service; and

(3) Quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank,) the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(b) To the extent specified herein, a depository financial services loan company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a depository financial services loan company may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions, or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a depository financial services loan company shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(d) To the extent specified herein, a depository financial services loan company may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a depository financial services loan company under this subsection and subsections (e) and (g)(3) in any one corporation shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.

(e) To the extent specified herein, a depository financial services loan company may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the depository financial services loan company in its prudent judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a depository financial services loan company under this subsection and subsections (d) and (g)(3) in any one company or other issuer shall not exceed twenty per cent of the depository financial service loan company's capital and surplus. Subject to the approval of the commissioner, the twenty per cent limitation shall not apply to investment grade securities secured entirely by mortgage loans originated by the depository financial

services loan company. In approving any transaction under this section, the commissioner may impose any conditions to ensure the safety and soundness of the institution.

(f) To the extent specified herein, a depository financial services loan company may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the depository financial services loan company is carried on, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the depository financial services loan company's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the depository financial services loan company in good faith expects to utilize the property as depository financial services loan company premises; provided, if the depository financial services loan company ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not without the approval of the commissioner exceed seventy-five per cent of the depository financial services loan company's capital and surplus;

(2) Personal property used in or necessary to the accommodation of the depository financial services loan company's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The depository financial services loan company's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the depository financial services loan company's capital and surplus;

(3) Personal property and fixtures which the depository financial services loan company acquires for purposes of leasing to third parties and such real property interests as shall be incidental thereto;

(4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the depository financial services loan company in satisfaction of or on account of debts previously contracted in the course of its business, when such property was held as security by the depository financial services loan company; and

(5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real property and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property coming into the possession of any depository financial services loan company pursuant to paragraph (4) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the depository financial services loan company after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a depository financial services loan company pursuant to paragraph (4) shall be sold or exchanged for other real property by the depository financial services loan company within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be extended by the commissioner.

Any depository financial services loan company acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from the assets, and when any loss impairs the capital and surplus of the depository financial services loan company the impairment shall be made good in the manner provided in this chapter.

(g) To the extent specified herein, a depository financial services loan company may invest its own assets in capital stock of:

(1) Service corporations as set forth in this article;

(2) A corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;

(3) Companies listed on the New York or American stock exchanges or on NASDAQ; provided that the aggregate amount invested by a depository financial services loan company under this paragraph and subsections (d) and (e) in any one corporation shall not exceed twenty per cent of the depository financial service loan company's capital and surplus.

§412:9-410 Deposits made by depository financial services loan companies. A depository financial services loan company may deposit any of its funds with:

(1) A federal reserve bank or a federal home loan bank in any amount; or

(2) Another depository institution;

provided that the deposits in any one depository institution does not exceed twenty-five per cent of the depository financial services loan company's capital and surplus, unless otherwise permitted by federal law.

PART V. NONDEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:9-500 Prohibitions. Except as otherwise expressly authorized by this chapter or other law, a nondepository financial services loan company shall not:

(1) Solicit, accept or hold deposits, investment certificates, thrift certificates or other accounts or instruments identical or similar to a deposit account, nor shall it borrow money in the form of, or issue, promissory notes, debentures, bonds or other obligations to the public; provided, however, that a nondepository financial services loan company may borrow funds from, and issue its notes, debentures, bonds or other obligations to financial institutions and other institutional lenders and not more than twenty-five institution-affiliated parties at any one time; or

(2) Issue standby letters of credit.

ARTICLE 10. CREDIT UNIONS

PART I. GENERAL PROVISIONS

§412:10-100 Definitions. The following definitions shall apply in construing this article unless such application would produce a result clearly inconsistent with the context of the statutory provision:

"Capital" means share accounts, membership shares, reserves and undivided earnings.

"Common bond" means persons or groups of persons, including members of the immediate family of persons within such groups, having a similar profession or occupation, being members of the same industry or trade, belonging to the same trade union; being members of the same association, club, or other organization; residing within an identifiable neighborhood, community, rural district, or county; being employed by a common employer; or being employed by the credit union.

"Corporate credit union" means a credit union whose field of membership consists primarily of other credit unions.

"Credit union" means a cooperative, nonprofit association, chartered under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money to improve their economic and social condition.

"Credit union service organization" means any organization which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions it serves.

"Deposit account" means a balance held by a credit union and established by a member, another credit union or a governmental unit in accordance with standards established by the board of directors of the credit union including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution. A deposit account is a debt owed by the credit union to the account holder.

"Federal power" means any activity, right, privilege, or immunity granted to any federal credit union under any federal statute, rule, regulation, interpretation, or court decision.

"Field of membership" means the group or category of persons eligible for membership in a credit union who share a common bond.

"Fixed asset" means a structure, land, computer hardware and software, and equipment.

"Insolvent" means the condition that results when the cash value of assets realizable in a reasonable time is less than the liabilities that must be met within that time.

"Members of the immediate family" shall be defined in the credit union's bylaws and may include persons related by blood or marriage, as well as foster and adopted children.

"Membership share" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share confers membership and voting rights.

"Reserves" means allocations of retained earnings and includes regular and special reserves, except for any allowances for loan losses and investment losses.

"Residential real property" means real property on which is situated a dwelling unit comprised of not more than four family units, the primary use of which is occupancy as a home, and includes, without limitation, a condominium or cooperative apartment.

"Share" or "share account" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union including balances designated as "regular shares," "share draft accounts," "share certificates," "membership shares" or other names. Ownership of a share account represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

§412:10-101 Necessity for credit union charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in the business of a credit union, represent itself as a credit union, use a name or title containing the phrase "credit union" or any derivation thereof, or control any other person engaging in the business of a credit union.

§412:10-102 Capital stock or surplus. A credit union shall have no capital stock, and shall have no minimum paid in capital or surplus requirement.

§412:10-103 Application for charter. (a) Five or more residents of this State who share a common bond may file an application with the commissioner to engage in the business of a credit union.

(b) The application shall contain the following information, unless waived by the commissioner:

(1) The proposed name of the credit union;
(2) Proposed lease agreements for its principal office;
(3) The territory in which the proposed credit union will operate;
(4) A business plan;
(5) Employment history, education, management experience and other biographical information for all original chartering applicants, and proposed executive officers of the credit union;
(6) Proposed policies regarding loans, investments, operations, accounting, recordkeeping and applicable federal and state consumer laws; and
(7) Any other information that the commissioner may require.

(c) The application shall be submitted on a form prescribed by the commissioner. The application shall be accompanied by a fee as the commissioner shall establish by rule, no part of which shall be refundable.

§412:10-104 Articles and bylaws. (a) The applicants shall file with the commissioner proposed articles of association and bylaws as a part of the application for organization.

(b) The articles of association shall contain, but shall not be limited to the following provisions:

(1) Name and location of the proposed credit union;
(2) Name and addresses of the chartering applicants and the number of shares subscribed by each;
(3) Proposed field of membership, specified in detail; and
(4) Term of the existence of the credit union, which may be perpetual.

(c) The bylaws shall contain provisions for the general government of the credit union which are consistent with the requirements of this article.

(d) In order to simplify the organization of credit unions, the commissioner shall cause to be prepared model articles of association and bylaws, consistent with this article, which may be used by credit union organizers for their guidance. Such articles of association and bylaws shall be available to persons desiring to organize a credit union.

§412:10-105 Disclosure of information. The identity of each original chartering applicant, and any information which is not confidential shall be available to the public. The original charting applicants may request in writing that information be kept confidential. The original chartering applicants shall designate and separate any matter which the original chartering applicants claim is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the original chartering applicants to request

confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to the original chartering applicants' request or otherwise, shall not be available to the public.

§412:10-106 Deposit and share insurance. (a) The organizers of the proposed credit union shall apply for insurance on share and deposit accounts from the National Credit Union Administration or any successor governmental agency.

(b) No credit union shall transact any credit union business until it has received federal insurance of its share and deposit accounts.

(c) A corporate credit union shall be exempt from the requirements of this section.

§412:10-107 Grant of approval. (a) Approval of the application for charter shall be granted if the commissioner finds that:

(1) The proposed credit union will be formed for legitimate purposes contemplated by this article;

(2) The qualifications, character, experience, and general fitness of the original chartering applicants and proposed executive officers are such as will command public confidence. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, an original chartering applicant or proposed executive officer is of good character and is qualified to participate in the affairs of the proposed credit union. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such applicant or executive officer has:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or

(E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter;

(3) The characteristics of the common bond of the proposed field of membership set forth in the proposed articles of association are favorable to the economic viability of the proposed credit union;

(4) The proposed operations of the credit union will be conducted in a safe and sound manner; and

(5) The articles of association and bylaws are in compliance with this article.

(b) Upon approval of the application by the commissioner, the credit union shall be a body corporate and as such, subject to the limitations herein contained,

shall be vested with all the powers and charged with all the liabilities conferred and imposed by this article.

(c) In granting approval of the application, the commissioner may impose such conditions and restrictions as shall be in the public interest, including without limitation requiring the applicants to fulfill representations contained in their application and agreements made with the commissioner during the application process.

(d) Upon issuance of a charter, the commissioner shall return the articles of association and bylaws to the applicants or their representatives. The original articles and bylaws shall be preserved in the permanent files of the credit union.

(e) The applicants shall not transact any credit union business until the application has been approved by the commissioner and a charter has been issued.

§412:10-108 Denial of charter. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application for charter. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a charter may be appealed to the circuit court as provided in chapter 91.

§412:10-109 Membership. (a) The membership of a credit union shall consist of those persons who share a common bond set forth in the articles of association, have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares and have complied with such other requirements as the articles of association and bylaws specify.

(b) Organizations comprised primarily of individuals who are eligible for membership in the credit union, and corporations whose total number of stockholders or whose majority stockholders are comprised primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals. Likewise, organizations one of whose principal functions is to provide services to persons who are eligible for membership in the credit union may be admitted to membership. Other organizations having a commonality of interest with the credit union may be admitted to membership with the approval of the commissioner.

(c) Any credit union organized under this article may accept as a member any other credit union organized under this chapter or federal law.

(d) The board of directors shall act on all membership applications, unless the board has appointed one or more membership officers, who shall be empowered to approve or disapprove membership applications according to criteria established in the bylaws and under the direction of the board. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. Any person whose application has been disapproved may appeal such decision to the board in writing.

(e) Members who cease to be eligible for membership may be permitted to retain their membership in the credit union, under reasonable standards established by the board of directors.

(f) The members of a credit union shall not be personally or individually liable for the payment of the credit union's debts solely by virtue of holding membership.

(g) The board of directors may expel a member from membership in the credit union, if such member fails to comply with the articles, bylaws, rules or regulations of the credit union, any law applicable to the credit union, or for any other just cause; provided, that no member may be expelled unless:

(1) The member has been informed in writing of the reasons for the expulsion;
(2) The member has, upon request, a reasonable opportunity to present evidence and argue against the expulsion, before a hearing panel consisting of the board of directors and the supervisory committee; and
(3) If the hearing is requested, a majority of the hearing panel votes to expel the member.

The amounts paid by an expelled member for shares of the credit union shall be paid to such member after deducting any amounts due by such member to the credit union; provided that such expulsion shall not relieve the expelled member from any remaining liability to the credit union.

§412:10-110 Membership meetings. (a) A credit union shall hold annual and special meetings of members when and as required by its bylaws. The bylaws shall provide that members be given reasonable notice of a meeting. A quorum for conducting any business at any meeting shall be fifteen members, and when not inconsistent with the other provisions of this article, a majority of all votes cast at any duly constituted meeting shall determine any question.

(b) At any meeting the members may:
(1) Decide any question properly raised at the meeting;
(2) Amend the bylaws if the notice of meeting has specified the questions to be considered; or
(3) Act on any matters as provided by the bylaws.

§412:10-111 Voting. (a) Persons eligible to vote at a credit union meeting shall be:
(1) A member for at least three months; provided, that during the first twelve months of the existence of the credit union, this requirement shall not apply; and
(2) In compliance with all other voting requirements as provided by the bylaws.

(b) Each member shall have only one vote, regardless of the number or type of shares of the credit union such member owns. A credit union member other than a natural person may vote through an agent designated for the purpose.

(c) No member shall be entitled to vote by proxy.

(d) Notwithstanding anything in this section, credit unions may, if the bylaws of the credit union so provide, conduct elections by mail or allow voting by absentee ballot; provided that all ballots shall be signed by the voting member and shall be valid only for the designated meeting.

(e) The board of directors may establish a minimum age, not greater than eighteen years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

§412:10-112 Board of directors. (a) The governing body of a credit union shall be its board of directors. The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. All members of the board shall hold office for such terms as the bylaws provide. The terms of office may be staggered so that an approximately equal number expire each year. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors. At all board meetings a majority of the board shall constitute a quorum. The board shall have such power, authority, duties, and responsibilities vested in and imposed on directors by law.

(b) At their first meeting after the annual meeting of the members, the directors shall elect from their number the board officers specified in the bylaws. The bylaws shall specify the specific duties of each of the board officers. The terms of the board officers shall be one year, or until their successors are chosen and have been duly qualified.

(c) Notwithstanding any other provision of this article, a credit union may use any titles it chooses for the officials holding the positions described in this article, as long as such titles are not misleading.

(d) The board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized to act for the board in all respects, subject to any conditions or limitations prescribed by the board.

(e) The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. The board may meet at other times as is necessary. Minutes shall be kept of all meetings of the board of directors.

(f) In addition to the duties found elsewhere in this article, it shall be the special duty of the board of directors to:

(1) Authorize the employment and compensation of the president who will act as the chief executive officer of the credit union and be in active charge of its operations. The president shall hire such other persons necessary to carry on the business of the credit union;
(2) Purchase adequate fidelity coverage for the president and for other officers and employees handling or having custody of funds or property;
(3) Approve an annual operating budget for the credit union;
(4) Authorize the conveyance of property;
(5) Borrow or lend money to carry on the functions of the credit union;
(6) Appoint any special committees deemed necessary; and
(7) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

§412:10-113 No compensation of directors or committee members. No member of the board, no officer of the board other than the treasurer, and no member of any committee, other than an employee, shall be compensated for services; provided that reasonable life, health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

§412:10-114 Credit committee. (a) If the bylaws provide for a credit committee, the board of directors may appoint or the members may elect a credit committee. The credit committee shall consist of an odd number of members of the credit union, not less than three, but which shall not include more than one loan officer. The bylaws shall specify the number, qualifications, terms and other conditions of service of the credit committee. The board of directors shall fill any vacancies in the credit committee until successors are appointed or elected at the next annual election.

(b) The credit committee shall have general supervision of all loans to members, unless that function is delegated to a credit manager. It may approve or disapprove loan applications, subject to written policies established by the board of directors.

(c) The credit committee shall meet as often as the credit union's business requires to consider applications for loans or to review the work of the loan

officers. A majority of committee members shall constitute a quorum, and except for those loans or lines of credit required to be approved by the board of directors, the vote of a majority present at any duly constituted meeting shall constitute the decision of the committee.

§412:10-115 Credit manager. If the bylaws provide, the board of directors may appoint a credit manager in addition to or in lieu of a credit committee, subject to the direct supervision of the president of the credit union. The president may also be the credit manager. The credit manager may approve or disapprove loan applications, subject to written policies established by the board of directors.

§412:10-116 Loan officers. (a) The board of directors, and if given such power by the board, the credit committee or the credit manager, may appoint one or more loan officers, who may be empowered to approve or disapprove loan applications, subject to written policies established by the board of directors. Not more than one member of any credit committee may serve as a loan officer. Each loan officer shall report to the credit committee or credit manager any action taken on a loan application within seven days after the filing thereof.

(b) A member whose application was disapproved by a loan officer may appeal such action to the credit committee, the credit manager or the board of directors, as provided by the bylaws.

§412:10-117 Supervisory committee. (a) Within thirty days following each annual election, the board of directors shall appoint a supervisory committee consisting of no fewer than three and not more than five members, one of whom may be a director other than the treasurer. The bylaws shall specify the qualifications, terms and other conditions of service of the supervisory committee. The board of directors shall fill vacancies in the supervisory committee until successors are appointed after the next annual election.

(b) The supervisory committee shall make or cause to be made an annual audit of the books and affairs of the credit union, and such supplementary audits as the board or the commissioner may require; provided that the supervisory committee shall hire a certified public accountant or other qualified person or firm to conduct the audit if any of the following conditions exist:

(1) The supervisory committee has not conducted an annual supervisory committee audit;
(2) The board of directors or the commissioner deems an outside audit necessary; or
(3) The credit union has experienced persistent and serious recordkeeping or accounting deficiencies in violation of the requirements of sections 412:3-108 or 412:3-111 which continue past a usual, expected or normal period of time.

The committee shall submit a report of each such audit to the board of directors and upon request, to the commissioner, and a summary of the report to the members at the next annual membership meeting of the credit union.

(c) The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than once every two years. The supervisory committee shall make or cause to be made such supplementary audits, examinations, and verifications of members' accounts as it deems necessary or as are required by the commissioner or the board of directors, and submit reports of these supplementary audits to the board of directors.

§412:10-118 Record of officials. Within thirty days after election or appointment, a record of the names and addresses of the members of the board and such other committees and officers, as required by the commissioner, shall be filed with the division of financial institutions.

§412:10-119 Conflicts of interest. No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which that person is directly or indirectly interested.

§412:10-120 Suspension or removal of officials. (a) The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the credit committee or the credit manager and shall report such action to the board of directors. The board shall meet not less than seven nor more than twenty-one days after such suspension to take appropriate action. The suspended person shall have the right to appear and be heard at the meeting.

(b) The supervisory committee by a two-thirds vote of the entire committee may suspend any officer or any member of the board of directors until the next members' meeting, which shall be held not less than seven nor more than twenty-one days after such suspension. At such meeting the suspended person shall have the right to appear and be heard. The suspension shall be acted upon by the members and the person shall be removed for cause from or restored to office.

(c) The board of directors by a two-thirds vote of those present at a meeting may suspend or remove any member of the supervisory committee or of the credit committee for failure to perform duties in accordance with this chapter, the articles of association, or the bylaws. The committee member shall have the right to appear and be heard at such meeting.

§412:10-121 Central credit unions. (a) Central credit unions may be chartered under this article and shall enjoy all powers of other credit unions chartered under this article and be subject to all provisions of this article not inconsistent with this section.

(b) A central credit union is a credit union whose field of membership includes the following:

(1) Officers, directors, committee members and employees of credit unions organized under this article or any other credit union law;
(2) Officers, directors and employees of associations of credit unions;
(3) Employees of federal or state government agencies responsible for the supervision of credit unions in this State;
(4) Persons in the field of membership of liquidated credit unions or of credit unions which have entered into or will enter into voluntary or involuntary liquidation proceedings;
(5) Employees of an employer having an insufficient number of employees to form or conduct the affairs of a separate credit union; and
(6) Members of the immediate families of persons qualifying for membership under this subsection.

§412:10-122 Taxation. (a) All credit unions, now or hereafter chartered under this chapter shall have the same immunity from state and local taxation that federally chartered credit unions have from time to time under the laws of the United States government. Any credit union organized under this chapter shall be exempt from all taxation now or hereafter imposed by this State or any taxing

authority within this State. No law which taxes corporations in any form shall apply to such credit union, except that any real property and personal services provided to the credit union shall be subject to taxation to the same extent as other similar property is taxed.

(b) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

§412:10-123 Fiscal year. The fiscal year of every credit union organized under this article shall end at the close of business on December 31.

§412:10-124 Conducting business outside this State. A credit union organized under this article may conduct business outside of this State in other states or territories where it is permitted to conduct business as a credit union.

§412:10-125 Credit union advisory board. (a) There shall be a credit union advisory board consisting of five members appointed pursuant to section 26-34 by the governor who shall also designate the chairman of the board. There shall be at least one member from each of the counties who shall serve for four years. The terms of the members shall be staggered and shall expire as follows: one on December 31 after the year that this chapter becomes law and one at the end of each succeeding calendar year thereafter. The governor shall appoint persons of tested credit union experience and who are members of credit unions operating under this chapter. However, until such time that there are credit unions operating under this chapter, the governor may make appointments to the board of persons with tested credit union experience from any credit union operating in this State.

(b) The powers and duties of the board shall include, but not be limited to:

(1) Advising the commissioner and others in improving the operations and supervision of credit unions;
(2) Making necessary recommendations as to procedural rules pursuant to chapter 91;
(3) Proposing laws and rules to safeguard the interest of depositors and members;
(4) Promoting the extension of credit at the lowest possible rates and cooperating with every group of people who may be or may become interested in the formation and development of a credit union under this article;
(5) Keeping detailed minutes of each board meeting; and
(6) Other duties designated by the commissioner or as provided by this article.

(c) Board meetings shall be held at such times and places as shall be determined by the chairman and the commissioner. Meetings may be called as needed, either by the chairman, the commissioner, or a majority of the board members.

(d) Three members of the board shall constitute a quorum at any meeting and a majority vote of those present shall prevail. No member of the board shall be qualified to act in any matter involving a credit union of which the advisory board member is an officer, director, committee person, member, employee, or to which the board member is indebted. The members of the board shall serve without compensation but shall be reimbursed through the office of the commissioner for expenses incurred in the performance of their duties.

PART II. POWERS OF CREDIT UNIONS

§412:10-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a credit union shall have the power to issue shares, solicit, accept and hold deposits, and engage in any activities which are usual or incidental to the business of a credit union. In addition to the powers mentioned elsewhere in this article, a credit union may:

(1) Enter into contracts of any nature;
(2) Sue and be sued;
(3) Adopt, use and display a common seal;
(4) Acquire, lease, hold, assign, pledge, hypothecate, sell, or otherwise dispose of property, either in whole or in part, necessary or incidental to its operations;
(5) Offer to its members, public unit accounts and other credit unions, shares, share certificates, share drafts, deposits, as provided in this article;
(6) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
(7) Borrow from any source within or without the State; provided that a credit union shall notify the commissioner in writing of its intention to borrow in excess of an aggregate of fifty per cent of its capital;
(8) Discount or sell any of the credit union's assets, and purchase the assets of another credit union;
(9) Offer related financial services, including, but not limited to, electronic fund transfers, safe deposit boxes, leasing and correspondent arrangements with other financial institutions;
(10) Hold membership in other credit unions organized under this or other laws, in service centers, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under State or federal law;
(11) Engage in activities and programs as requested by any governmental unit, subject to approval by the board of directors and not inconsistent with this article;
(12) Act as fiscal agent for and receive payments on share and deposit accounts from a governmental unit;
(13) Make contributions to any nonprofit civic, charitable or service organizations; and
(14) Make investments as permitted under this article.

(b) A credit union may exercise all incidental powers that are necessary or requisite to enable it to effectively carry out its purposes.

§412:10-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal credit union under any federal statute, rule, regulation, interpretation or court decision.

(b) Any credit union desiring to acquire any federal power, shall file an application with the commissioner. The application shall indicate the applicable federal statute rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other credit unions

may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision of this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

(1) That the credit union has violated any conditions imposed in connection with the grant of power; or,

(2) The credit union has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action taken under subsections (d) or (e) of this section shall be taken only after the commissioner has given the credit union notice of the proposed action and an opportunity to be heard.

§412:10-202 Credit union service organizations. A credit union may invest its funds in shares, stocks, or obligations of credit union service organizations providing services which are associated with the routine operations of credit unions, up to one per cent of the capital of the credit union. This authority does not include the power to acquire control directly or indirectly, of another financial institution. Loans to credit union service organizations, shall not exceed one per cent of the capital of the credit union. The one per cent limitation on loans to credit union service organizations is independent of, and in addition to, the one per cent limitation on investment in credit union service organizations.

§412:10-203 Sale or purchase of obligations or notes. A credit union may purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this section, if after that purchase, the aggregate of the unpaid balances of notes purchased under authority of this section would exceed five per cent of the capital of the credit union.

§412:10-204 Sale or purchase of assets. A credit union may sell all or part of its assets to another credit union, purchase all or part of the assets of another credit union and assume the liabilities of the selling credit union and those of its members.

PART III. ACCOUNTS

§412:10-300 Applicability of other provisions of this chapter. Except to the extent that the provisions of this part are inconsistent, all provisions of article 4 shall apply to the share accounts and deposit accounts offered by a credit union. In case of any inconsistencies, the provisions of this part shall control.

§412:10-301 Share accounts and membership shares. (a) Share accounts and membership shares (if any) shall be subscribed to and paid for in such manner as the bylaws prescribe.

(b) A credit union may require its members to subscribe to and make payments on membership shares.

(c) The par value of shares and membership shares shall be prescribed in the bylaws.

(d) A membership share may not be redeemed or withdrawn except upon termination of membership in the credit union.

(e) A credit union may limit the number of shares which may be owned by a member, but any such limit shall apply alike to all members.

§412:10-302 Dividends. (a) At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare dividends to be paid on share accounts and membership shares (if any) from undivided earnings.

(b) Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

§412:10-303 Deposit accounts. (a) A credit union may accept deposit accounts from its members, other credit unions and governmental units subject to the terms, rates and conditions established by the board of directors.

(b) Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

§412:10-304 Withdrawals. (a) Funds in share and deposit accounts may be withdrawn for payment to the account holder or third parties in such manner and in accordance with such procedures as are established by the board of directors.

(b) Share and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws.

§412:10-305 Minor accounts. Payments on share and deposit accounts may be received from a minor who may withdraw funds from such accounts including the dividends and interest thereon. Payments on share and deposit accounts by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

§412:10-306 Joint accounts. A member may designate any person or persons to own a share or deposit account with the member in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law, but no co-owner, unless a member in the co-owner's own right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

§412:10-307 Trust accounts. (a) Share and deposit accounts may be owned by a member in trust for a beneficiary.

(b) Beneficiaries may be minors, but no beneficiary unless a member in that person's own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

§412:10-308 Payable-on-death accounts. Notwithstanding any other provision of law, a credit union may establish share and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable-on-death payees. Any transfer to a payable-on-death payee is effec-

tive by reason of the account contract and shall not be considered to be a testamentary transfer.

§412:10-309 Liens. The credit union shall have a lien on the share accounts and accumulated dividends of a member for any sum owed the credit union by said member and for any loan endorsed by the member. The credit union shall also have a right of immediate set-off with respect to every deposit account. The credit union may also refuse to allow withdrawals from any share or deposit account. The credit union may waive its rights to a lien, to immediate set-off, to restrict withdrawals, or to any combination of such rights with respect to any share or deposit account or groups of such accounts.

§412:10-310 Dormant accounts. (a) If there has been no activity on a share or deposit account for one year, the credit union may impose a reasonable maintenance fee.

(b) Share and deposit accounts, dividends, interest and other sums due or standing in the name of a member or other person and held by the credit union are presumed abandoned unless the member or other person has, within five years:

(1) Increased or decreased the amount of the funds or presented an appropriate record for the crediting of dividends or interest;
(2) Corresponded in writing with the credit union concerning the funds; or
(3) Otherwise indicated an interest in the funds as evidenced by a memorandum on file with the credit union.

PART IV. LOANS

§412:10-400 Applicability of part. This part sets forth the requirements and restrictions for lending by all credit unions. A credit union may make loans and extensions of credit as permitted by this part and as provided elsewhere in this article.

§412:10-401 General requirements for loans. A credit union shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:10-402 Loans to members. A credit union may make unsecured and secured loans to its members for such purposes and upon such conditions as the bylaws may provide. The board of directors shall establish written policies with respect to the granting of loans and the extending of lines of credit, including the terms, conditions and acceptable forms of security.

§412:10-403 Interest rates. (a) The interest rates on loans shall be determined by the board of directors, subject to the following:

(1) The interest rate on any credit union loan hereafter made shall not exceed eighteen per cent per year on the unpaid balance, may be fixed or variable, and may provide for a balloon payment. A variable rate may be based upon an index, the prime rate, or some other objective factor, so that the interest rate will increase or decrease according to such factor.
(2) The commissioner, without regard to chapter 91, may establish an interest rate ceiling exceeding the eighteen per cent per year for periods not to exceed eighteen months, if the commissioner determines that prevailing interest rate levels threaten the safety and soundness of credit unions.

(b) The board may also authorize any refund of interest on such classes of loans and under such conditions as it prescribes.

(c) If a greater rate of interest than that permitted under this article is contracted for in any loan under this article, the loan shall not, by reason thereof, be void. But, if in any action on the loan, proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the credit union shall only recover the amount actually received by the borrower in cash, credit or the equivalent thereof plus the charges, if any, which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower. The borrower shall only recover costs. If interest has been paid, judgment shall be for the recoverable amount less the amount of interest paid. Sections 478-5 and 478-6 shall not apply to loans made under this article by credit unions.

§412:10-404 Other charges. (a) In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with the making, closing, disbursing, extending, collecting or renewing of loans.

(b) A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner.

§412:10-405 Applications. Except as provided in section 412:10-410, every application for a loan shall be made in writing upon a form prescribed by the credit union. Each loan shall be evidenced by a written document.

§412:10-406 Prepayment of loan. A member may repay a loan, prior to maturity in whole or in part on any business day without penalty.

§412:10-407 Limitations on obligations of one borrower. (a) No credit union shall permit a person to become indebted or liable to it, either directly or indirectly, on loans or extensions of credit in a total amount outstanding at any one time in excess of ten per cent of the credit union's capital.

(b) The aggregate obligations of a borrower to a credit union shall include any obligations owed to the same credit union by a partnership or association of which the borrower is a partner or member if such partnership or membership imposes liability on the borrower for said obligations by agreement or operation of law.

(c) The limitations set forth in this section shall not apply to:

(1) A credit union's deposits with another depository institution made in compliance with this chapter;

(2) A credit union's sale of federal funds to another depository institution with a maturity of one business day or under a continuing contract;

(3) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit; and

(4) Loans and extensions of credit to the extent secured by a pledge or security interest in a share or deposit account in the lending credit union.

§412:10-408 Loans to officials. (a) Loans may be made to officers, directors and members of the credit and supervisory committees of the credit union, provided that:

(1) The loan complies with all lawful requirements under this article with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;

(2) The loan shall be approved by the board of directors if the aggregate amount of all loans outstanding to the applicant including the loan amount applied for exceeds $10,000. Loans that are fully secured by shares and deposits in the credit union need not be approved by the board of directors and need not be included in determining the aggregate amount of loans outstanding to the applicant. Acting as a co-borrower, guarantor, or endorser of any loan to other members made by the same credit union shall be counted as a loan in determining the aggregate amount of loans made by the credit union to any applicant; and

(3) The loan applicant takes no part in and is not present during the consideration of the application.

§412:10-409 Real estate mortgage loans. (a) The amount of any credit union loan secured by a mortgage on real property shall be limited to the following percentages of the appraised value of the property:

(1) Ninety per cent of the value of any residential real property; and

(2) Eighty per cent of the value of any non-residential real property. The principal amount of the loan shall be added together with the outstanding balances of all prior liens on the real property to determine the loan to value ratio.

(b) The amount of a loan secured by residential real property may be increased by the unencumbered share or deposit balances of the borrowing member that are pledged to the loan.

(c) Loans secured by real property other than residential real property shall provide for the regular reduction of principal.

(d) For loans secured by real property, the credit union may require the borrower to make regular deposits for the payment of insurance, taxes and other expenses assessed against the property.

§412:10-410 Lines of credit. A credit union may offer its members self-replenishing lines of credit. Loan advances within the limits of a line of credit may be made without the necessity of submitting additional loan applications; provided that the applicant qualifies for the line of credit and the applicant's aggregate indebtedness under the line of credit does not exceed the approved limit. The board, credit committee or credit manager shall review, or cause to be reviewed, all lines of credit at least once every three years.

§412:10-411 Loans to other credit unions. A credit union may make loans to other credit unions, central credit unions, corporate credit unions or a central liquidity facility established under federal or state law; provided that the loans shall be approved by the board of directors and that the aggregate of all loans to such credit unions and a central liquidity facility shall not exceed twenty-five per cent of the lending credit union's capital.

§412:10-412 Participation loans. Participation loans to credit union members jointly with other credit unions, credit union service organizations, or financial organizations shall be in accordance with written policies of the board of directors.

A credit union which originates a loan for which participation arrangements are made in accordance with this section shall retain an interest of at least ten per cent of the face amount of the loan.

§412:10-413 Other loan programs. (a) A credit union may loan to members under any government guaranteed or insured loan program and such insurance on these loans shall be deemed adequate security. The terms of such loans shall be as defined by the board of directors under the provisions of the loan program.

(b) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

(c) A credit union may finance for any person the sale of the credit union's personal property, including property obtained as a result of defaults in obligations owed to the credit union, under the terms, conditions and rates provided by this article.

PART V. INVESTMENTS

§412:10-500 Applicability of part. This part sets forth the requirements and restrictions for investments made by all credit unions. A credit union may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:10-501 General requirement for investments. (a) A credit union shall make investments that are consistent with prudent investment practices and in compliance with all applicable federal and State law.

(b) The board of directors of a credit union and any other person charged with the responsibility of investing the credit union's assets shall exercise such reasonable diligence, discretion, judgment, and intelligence as would be expected of a prudent investor. Among other things, they shall not engage in speculative or unsound investments, and they shall at all times consider the probable safety as well as the probable income of the capital being invested.

(c) The board of directors shall establish written investment policies.

§412:10-502 Permitted investments. (a) To the extent specified herein, a credit union may invest its own assets in securities and obligations of:

(1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

(2) United States government-sponsored agencies, which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Resolution Funding Corporation, Stu-

dent Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

(3) Quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member, provided that the total amount invested in any one issuer shall not exceed ten per cent of the credit union's capital.

(b) To the extent specified herein, a credit union may invest its own assets in bonds, securities, or similar obligations issued by this State, or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a credit union may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions, or by any foreign country or political subdivision of such country; provided, that:

(1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;

(2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and

(3) The total amount invested in such obligations of any one issuer by a credit union shall not exceed ten per cent of the credit union's capital.

(d) To the extent specified, a credit union may invest its own assets in credit union service organizations pursuant to section 412:10-202.

(e) To the extent specified herein, a credit union may invest its own assets in securities that are rated within the four highest grades by a nationally-recognized rating service and which represent ownership of one or more promissory notes, certificates of interest, or participation in such notes, or which are secured by one or more promissory notes, certificates of interest, or participation in such notes, which notes:

(1) Are directly secured by a first lien on residential real estate or a residential manufactured home as defined under Title 42 of the United States Code, whether or not such manufactured home is considered real or personal property under State law; and

(2) Were originated by a credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the Secretary of Housing and Urban Development. Notes secured by a lien on a manufactured home may also originate from a credit union approved for insurance by the Secretary of Housing and Urban Development. The total amount invested in such securities by a credit union shall not exceed twenty per cent of its capital and surplus.

The term "securities" in this paragraph shall have the same meaning as given in chapter 485.

(f) To the extent specified herein, a credit union may invest its own assets in mortgage related securities that:

(1) Are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77D(5)); or

(2) Are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C.

78C(a)(41)), subject to such rules as the commissioner may adopt, including rules prescribing minimum size of issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

(g) To the extent specified herein, a credit union may purchase, hold, convey, sell or lease real or personal property as follows:

(1) The real property in or on which the business of the credit union is carried on, other space in the same property to rent as a source of income, other real property necessary to the accommodation of the credit union's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the credit union in good faith expects to utilize the property as credit union premises; provided, if the credit union ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed five per cent of the credit union's capital;

(2) Personal property used in or necessary to the accommodation of the credit union's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The credit union's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed five per cent of the credit union's capital;

(3) Such real property or tangible personal property as may come into the credit union's possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the credit union in satisfaction of or on account of debts previously contracted in the course of the credit union's business, when such property was held as security by the credit union; and

(4) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real property and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property coming into the possession of any credit union pursuant to paragraph (3) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the credit union after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a credit union pursuant to paragraph (3) shall be sold or exchanged for other real property by the credit union within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any credit union acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital of the credit union the impairment shall be made good in the manner provided in this chapter.

§412:10-503 Deposits made by credit unions. A credit union may deposit any of its funds in a deposit or share account with another depository institution; provided that the other depository institution has been designated a depository by the board of directors of the credit union and the accounts of the depository institutions are insured by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund or a successor agency.

PART VI. RESERVE ALLOCATIONS

§412:10-600 Regular reserve. (a) At the end of each accounting period and before the payment of any dividend, each credit union shall set aside from its gross earnings the following reserve against contingencies:

(1) A credit union in operation for less than four years or having assets of less than $500,000 shall set aside ten per cent of its gross earnings until the regular reserve equals seven and a half per cent of its total outstanding loans and risk assets, whereupon the credit union shall set aside five per cent of its gross earnings until the regular reserve equals ten per cent of its total outstanding loans and risk assets.

(2) A credit union in operation for four or more years or having assets of $500,000 or more shall set aside ten per cent of gross earnings until the balance in the regular reserve equals four per cent of its total outstanding loans and risk assets, whereupon the credit union shall set aside five per cent of its gross earnings until the regular reserve equals six per cent of its total outstanding loans and risk assets.

(b) Whenever a credit union's regular reserve account falls below the percentages required by this section, the credit union shall notify the commissioner and shall make up the deficiency by regular contributions in such amounts as may be needed to maintain the required level.

(c) The commissioner may decrease or waive entirely the reserve requirement for an individual credit union in one or more accounting periods when in the commissioner's opinion such a decrease is necessary or desirable.

(d) The regular reserve shall belong to the credit union and shall be used to meet losses on risk assets and to meet such other classes of losses as are approved by the commissioner. The regular reserve shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the commissioner.

§412:10-601 Special reserves. The board of directors may establish, or commissioner may require any credit union on an individual basis to establish, and transfer funds into one or more special reserve accounts when in the board's or the commissioner's judgment such action is necessary to protect the interests of the credit union's members, including without limitation circumstances when a credit union purchases accounts, or suffers an impairment or threat of impairment that endangers the adequacy of its regular reserve account. Special reserves may include allowances for loan losses and investment losses.

§412:10-602 Risk assets. The commissioner shall define by rule what is deemed "risk assets" for the purpose of establishing the regular reserve.

PART VII. OTHER MEMBER SERVICES

§412:10-700 Insurance for members. A credit union may purchase or make available insurance for its members either on an individual or group basis.

§412:10-701 Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out

of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

§412:10-702 Group purchasing. A credit union may enter into marketing arrangements and joint ventures with other credit unions, or organizations or financial institutions to facilitate its members' voluntary purchase of goods, insurance and other services from third parties, consistent with the purposes of the credit union. A credit union may be compensated for services so provided.

§412:10-703 Money-type instruments. A credit union may collect, receive and disburse monies in connection with the providing of negotiable checks, money orders, travelers checks, and other money-type instruments, and the providing of services through automated teller machines and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

§412:10-704 Retirement accounts. A credit union may act as trustee or custodian of any form of retirement, pension, profit-sharing, or deferred income accounts authorized under federal law or the laws of this State including but not limited to individual retirement accounts, pension funds of self-employed individuals, and pension funds of a company or organization whose employees or members are eligible for membership in the credit union.

PART VIII. CORPORATE CREDIT UNION

§412:10-800 Application of part. Provisions of this part shall govern the formation and operations of a corporate credit union. Only one corporate credit union may be chartered under this article and as such shall have the exclusive right to use the term "corporate credit union" as part of its name. All parts of this chapter not inconsistent with this part shall apply.

§412:10-801 Purposes. The purposes of the corporate credit union are to:

(1) Accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;
(2) Act as an intermediary for credit union funds between members and other corporate credit unions;
(3) Obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;
(4) Foster and promote in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations the economic security, growth, and development of member credit unions; and
(5) Provide payment systems and correspondent services to its members.

§412:10-802 Membership. Membership in the corporate credit union shall consist of and be limited to the credit union subscribers to the articles of association, credit unions chartered under this article, the Federal Credit Union Act or any other credit union law, and organizations or associations of credit unions.

§412:10-803 Organization. The application, approval and formation process for the corporate credit union shall be the same as for any other credit union, except that ten or more credit unions shall be required to file an application for a charter.

§412:10-804 Management and operation of corporate credit union. The corporate credit union shall be organized and operated like any other credit union, except that:

(1) Persons eligible to hold office and vote shall be designated by the board of directors of each member of the corporate credit union as the voting representative in the corporate credit union. Such voting representative shall be eligible to hold office in the corporate credit union as if such person were an individual member of the corporate credit union. Each member shall have only one vote;

(2) The corporate credit union shall be exempt from the regular reserve requirements established under this article, but shall establish and maintain an equity reserve to meet losses, in accordance with rules adopted by the commissioner;

(3) The corporate credit union shall be exempt from the share and deposit requirements of this article and from the security laws of this State; and

(4) The supervisory committee of a corporate credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting. A copy of the audit report shall be submitted to the commissioner within 30 days after receipt by the board of directors.

§412:10-805 Powers. The corporate credit union shall have all the rights, powers and privileges of any other credit union chartered under this article, as well as the power to:

(1) Accept funds, either as shares or deposits, from a member and from any credit union chartered by this State, by another state or territory of the United States, or by the United States, whether or not such credit union is a member of the corporate credit union, or from a similar institution incorporated under the laws of another country;

(2) Make loans to or invest in a member or in any credit union chartered by this State, by another state or territory of the United States, or by the United States, whether or not such credit union is a member of the corporate credit union;

(3) Make loans to or place deposits in a bank, savings bank, trust company, or savings and loan association chartered by this State, by another state or territory of the United States, or by the United States;

(4) Provide payment systems and correspondent services to its members;

(5) Participate with any credit union chartered by this State, another state or territory of the United States, or the United States in making loans to its members or to members of any other participating credit union, under the terms and conditions to which the participating credit unions agree;

(6) Contract for penalties for payment of loans prior to the scheduled maturity;

(7) Sell all or a part of its assets to another depository financial institution, purchase all or part of the assets of another depository financial institution and assume the liabilities of the selling depository financial institution and those of the selling depository institution's members or depositors;

(8) Act as intermediary for the funds of members, credit unions and other corporate credit unions;

(9) Act as agent for members, other credit unions and credit union organizations in paying, receiving, transferring the assets and liabilities received and invested as permitted in this article;
(10) Receive and hold in safekeeping the securities and other assets of its members and, in connection therewith, make such disposition of such assets as may be agreed to or directed by the member; and
(11) Exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out the corporate credit union's purposes.

§412:10-806 Participation in central system. The corporate credit union may enter into agreements and subscribe to any required shares for the purpose of participation in the National Credit Union Administration Central Liquidity Facility created by Public Law 95-630 or any other state or federal central liquidity facility or central financial system for credit unions. The corporate credit union may also enter into agreements with any third parties to aid credit unions to obtain additional sources of liquidity.

§412:10-807 Collection on loans to members. (a) For any amounts due from a member to the corporate credit union, the corporate credit union shall have:
(1) A right of immediate set-off against the balances of the share and deposit accounts of each member; and
(2) A lien on all share and deposit accounts of each member in the total amount of the indebtedness, which shall attach to such accounts and be effective whenever the member is indebted to the corporate credit union, and which shall have priority over the interest of all members and unsecured creditors of the debtor member.

(b) The board of directors or credit committee of the corporate credit union may require and accept additional security for loans to a member in the form of a pledge, assignment, hypothecation, or mortgage of any assets of the member or a guarantor.

§412:10-808 Meetings. The board of directors of the corporate credit union shall meet at least every ninety days in person or by means of telephone as provided in the bylaws.

ARTICLE 11. FINANCIAL INSTITUTION HOLDING COMPANIES

§412:11-100 Applicability of article. The provisions of this article shall govern the registration, reporting and examination of financial institution holding companies in this State.

§412:11-101 Registration and reporting of financial institution holding companies. (a) Within one hundred eighty days after the date of enactment of this article, or within one hundred eighty days after becoming a financial institution holding company, whichever is later, and annually thereafter on dates established by the commissioner, which shall not be earlier than ninety days after the close of the fiscal year, each financial institution holding company shall register with the commissioner, on forms provided or prescribed by the commissioner. Such forms shall include information with respect to the financial condition, operation, management and inter-company relationships of the financial institution holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this article. The commissioner shall, as far as possible consistent with the effective discharge of the commissioner's responsibilities, prescribe forms in current use by financial institution hold-

ing companies in discharging their registration or reporting obligations under the federal Securities Exchange Act, the federal Bank Holding Company Act and the federal Home Owners' Loan Act. The commissioner may, in the commissioner's discretion, extend the time within which a financial institution holding company shall register and file the requisite information.

(b) The commissioner is authorized to adopt rules pursuant to chapter 91 as may be necessary to enable the commissioner to administer and carry out the registration and reporting procedures and requirements of this section.

§412:11-102 Examination of financial institution holding company. The commissioner may from time to time conduct such reasonable examinations of any financial institution holding company as may be necessary or appropriate to determine whether the condition or activities of the company are jeopardizing the safety or soundness of the operations of its financial institution subsidiary. The commissioner shall not conduct such examinations of holding companies unless the commissioner has good cause to believe that a holding company is experiencing financial adversity which will have a material negative impact on the safety and soundness of its financial institution subsidiary. The cost of such examinations shall be assessed against and paid by the financial institution holding company in the same manner as financial institutions under section 412:2-105.

§412:11-103 Use of federal examinations. The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:11-102 or otherwise, all or any part of the results of an examination conducted by an appropriate federal regulatory agency of a financial institution or a financial institution holding company for the same period or subject matter that would be covered by an examination required or permitted under this article.

§412:11-104 Service of process. Every financial institution holding company shall designate in its registration statement the name and address of an agent in this State who is authorized to receive service of process and any notices in behalf of the holding company. Service may be made on a financial institution holding company by leaving a copy of the process at the office of the appointed agent in this State. If such person is not available or refuses to accept service or notice, the service or notice may be served upon any officer or manager of the financial institution subsidiary located in this State.

§412:11-105 Sanctions for failure to register or submit reports. Any financial institution holding company failing to register or furnish any report or information as and when required under this article, shall be subject to an administrative fine of not more than $200 for each day that it fails to register or for each day that any such report is delinquent, which fine shall be recovered pursuant to the provisions of section 412:2-611.

§412:11-106 Injunctions. If it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this article or any rule or order of the commissioner, the commissioner may apply to the circuit court for an order enjoining such person from violating or continuing to violate this article or any rule or order and for injunctive relief as the nature of the case or the interests of the financial institution or the financial institution holding company or its depositors, beneficiaries, creditors or shareholders may require."

SECTION 2. Section 53-18, Hawaii Revised Statutes, is amended to read as follows:

"**§53-18 Investment of funds.** A redevelopment agency may invest any of its funds not required for immediate disbursement in securities which constitute legal investments under state laws relating to investment of trust funds by trust companies, including those authorized by [part II of chapter 402, and section 406-22.] article 8 of chapter 412."

SECTION 3. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

"**§92-28 State service fees, increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency, with the approval of the governor, may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that the authority to increase or decrease fees or nontax revenues shall extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, [403, 407, 408, 409,] 412, 415, 421, 422, 425, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 514A, 572, 574, and 846 (pt II); and provided further that this section shall not apply to fees charged by the University of Hawaii or to judicial fees as may be set by any chapter mentioned above."

SECTION 4. Section 155-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all state or national banks[, either commercial banks within the meaning of section 403-2, or national banks excepted under section 403-10, doing business] authorized to accept or hold deposits in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with those banks."

SECTION 5. Section 201E-56, Hawaii Revised Statutes, is amended to read as follows:

"**§201E-56 Bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, all credit unions, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest any moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the housing finance and development corporation, or in any bonds or other obligations issued by any public housing authority or agency in the United States when the bonds or other obligations of the public housing authority or agency are secured by a pledge of annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the bonds and other obligations of the corporation and the bonds and other obligations of any such public housing authority or agency shall be autho-

rized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 6. Section 201E-192, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§201E-192[]] Program administration.** The corporation, in administering the housing alteration revolving loan fund program, shall establish the terms and conditions, maturities, interest rates, collateral, and other requirements for loans. The corporation shall have the power to take all necessary actions to collect any delinquent amounts in the event of a default in the payment of any installment of principal or interest on any loans made from the fund and to otherwise secure such loans in a manner which affords reasonable protection of the State's resources. The corporation may enter into agreements with or purchase services required for the purposes of this subpart from any state or national bank [as defined in section 403-2.] authorized to accept or hold deposits in the State."

SECTION 7. Section 206-33, Hawaii Revised Statutes, is amended to read as follows:

"**§206-33 Development project bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the board of land and natural resources, and the bonds and other obligations of the board or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 8. Section 207-11, Hawaii Revised Statutes, is amended by amending the definition of "foreign lender" to read as follows:

"'"Foreign lender" means (A) "a depository institution" as defined in section 501(a)(2) of the federal Depository Institutions Deregulation and Monetary

Control Act of 1980, a "real estate investment trust" as defined in the Internal Revenue Code, an insurance company, the principal office of which is in another state, whether incorporated or unincorporated and whether acting in its individual capacity or in a fiduciary capacity, (B) the trustee or trustees from time to time in office of any employee benefit plan, (C) a lender approved by the Secretary of the United States Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, (D) any corporation of which all of the capital stock (except the directors' qualifying shares) is owned by one or more foreign lenders specified in (A), (B), and (C), and (E) any corporation of which all of the capital stock (except for the directors' qualifying shares) is owned by one or more foreign lenders specified in (D), but the term "foreign lender" does not include any [small loan or] financial services loan company [of the general character covered by chapters 408 and 409.] licensed under article 9 of chapter 412."

SECTION 9. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

"**§207-12 Exemptions and immunities.** A foreign lender which (1) does not maintain a place of business in this State, (2) conducts its principal activities outside this State, and (3) complies with this part, does not by engaging in this State in any or all of the activities specified in section 207-13, violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to chapter [401, 402, 403, 406, 407,] 412, 415, or 431, or become subject to any taxation which would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation under chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State; provided that nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; and provided further that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided further that if any such foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in section 207-13, then the rents and other receipts received by the foreign lender from such property and the proceeds of sale by the foreign lender of such property and all income and receipts from the foreign lender's business or activities in this State not specified in section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if such rents, other receipts, proceeds, and income were received by a resident of this State, but such other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation hereinabove stated with respect to the activities specified in section 207-13."

SECTION 10. Section 219-8, Hawaii Revised Statutes, is amended to read as follows:

"**§219-8 Participation in loans by the department.**

(1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration.

(2) Participation loans under this section shall be limited by the provisions of section 219-6 and the department of agriculture's share shall not exceed the maximum amounts specified therefor.

(3) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all state or national banks[, either commercial banks within the meaning of section 403-2, or national banks excepted under section 403-10, doing business] authorized to accept or hold deposits in the State, on secured short term loans made to borrowers who have the highest credit rating with those banks.

(4) The private lender's share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under section 219-7.

(5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan.

(6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan, provided that this fee shall not be added to any amount which the borrower is obligated to pay.

(7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting.

(8) Security for participation loans shall be limited by section 219-5(6). All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender.

SECTION 11. Section 241-1, Hawaii Revised Statutes, is amended by amending the definitions of "bank", "building and loan association", and "financial services loan company" to read as follows:

""Bank" means and includes any national banking association and any bank [organized under the laws of the State, any foreign bank doing business in the State under the authority of chapter 405D, and any other corporation doing a banking business within the State under the authority of chapters 403 and 405.] chartered[2] or licensed pursuant to chapter 412.

"Building and loan association" means any corporation [subject to chapter 407,] or mutual association which has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.

"Financial services loan company" means any company which has been authorized to engage in the business of a financial services loan company [subject to chapter 408.] pursuant to chapter 412."

SECTION 12. Section 241-3.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§241-3.5[]] **Deduction from entire net income.** There shall be allowed as a deduction from entire net income to the extent not deductible in determining federal taxable income, the adjusted eligible net income of an international banking facility, as defined in [chapter 405A,] section 412:5-206, determined as follows:

(1) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses.

(2) Eligible gross income shall be the gross income derived by an international banking facility from:

(A) Making, arranging for, placing, or servicing loans to foreign persons; provided that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per cent or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than a bank), domestic partnership, or resident individual, substantially all the proceeds of the loan shall be for use outside of the United States;

(B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or

(C) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

(3) Applicable expenses shall be any expense or other deduction attributable, directly or indirectly, to the eligible gross income described in paragraph (2).

(4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.

(5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds to the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount from the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.

(6) The floor amount shall be the amount, if any, determined by multiplying the amount remaining after subtracting the ineligible funding amount from the eligible net income by a fraction, not greater than one, which is determined as follows:

(A) The numerator shall be:

(i) The percentage, as set forth in subparagraph (C), of the average aggregate amount of the taxpayer's loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, or savings and loan associa-

tions or foreign branches of savings and loan associations, as the case may be, (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer for its branches, agencies, and offices within the State for taxable years 1980, 1981, and 1982, minus;

(ii) The average aggregate amount of such loans and such deposits for the taxable year of the taxpayer (other than such loans and deposits to an international banking facility); provided that in no case shall the amount determined in this clause exceed the amount determined in this subparagraph;

(B) The denominator shall be the average aggregate amount of the loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, including foreign subsidiaries or foreign branches of the bank, (or savings and loan associations, as the case may be) which loans and deposits were recorded in the financial accounts of the taxpayer's international banking facility for the taxable year;

(C) The percentage shall be one hundred per cent for the first taxable year in which the taxpayer establishes an international banking facility and for the next succeeding four taxable years. The percentage shall be eighty per cent for the sixth, sixty per cent for the seventh, forty per cent for the eighth, and twenty per cent for the ninth and tenth taxable years next succeeding the year such bank or savings and loan association establishes such facility, and zero in the eleventh succeeding year and thereafter.

(7) If adjusted eligible net income is a loss, the amount of such loss shall be added to entire net income.

(8) As used in this section, the term "foreign person" means:

(A) An individual who is not a resident of the United States,

(B) A foreign corporation, a foreign partnership, or a foreign trust, as defined in section 7701 of the federal Internal Revenue Code of 1954, as amended, other than a domestic branch thereof,

(C) A foreign branch of a domestic corporation (including the taxpayer),

(D) A foreign government or an international organization or an agency of either, or

(E) An international banking facility.

For the purposes of this paragraph, the term "foreign" and "domestic" have the same meaning as set forth in section 7701 of the federal Internal Revenue Code of 1954, as amended."

SECTION 13. Section 356-33, Hawaii Revised Statutes, is amended to read as follows:

"**§356-33 Housing bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, all credit unions, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest any moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the Hawaii housing authority, or in any

bonds or other obligations issued by any public housing authority or agency in the United States when the bonds or other obligations of the public housing authority or agency are secured by a pledge of annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the bonds and other obligations of the authority and the bonds and other obligations of any such public housing authority or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 14. Section 415-3, Hawaii Revised Statutes, is amended to read as follows:

"**§415-3 Purposes.** Every corporation incorporated under this chapter has the purpose of engaging in any lawful business, other than [banking, insurance,] activities of a financial institution under chapter 412, activities under chapter 431, or carrying on any profession, except pursuant to chapter 415A, unless a more limited purpose is set forth in the articles of incorporation."

SECTION 15. Section 415-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A foreign financial institution whose principal office is not within the State and which is federally or state-chartered and federally-insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State. Such financial institution shall not thereby become subject to chapter [401, 402, 403, 406, 407 or 408.] 412. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapter [401, 402, 403, 406, 407 or 408.] 412."

SECTION 16. Section 421H-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the charter of incorporation and bylaws:

(1) For the benefit of the corporation or the improvement of the real property, including its use as collateral for loans [authorized under section 403-98.][1]

(2) For expansion of the corporate equity by acquisition of additional interest in real property for purposes consistent with its charter.
(3) For public benefit or charitable purposes."

SECTION 17. Section 431:10D-211, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10D-211 Credit union groups.** The lives of the members of a credit union may be insured under a policy issued to the credit union which shall be deemed the policyholder to insure members of the credit union for the benefit of persons other than the credit union or any of its officials, subject to the following requirements:

(1) Except for item (2), the members eligible for insurance under the policy shall be all of the members of the credit union.
(2) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer.
(3) The premiums for the policy shall be paid by the policyholder, either from the credit union's own funds or from charges collected from the insured members specifically for the insurance, or from both; provided that when the premium is paid by the members, or by the credit union and its members jointly, at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of insurability is not satisfactory to the insurer, must elect to make the required contributions.
(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the credit union.
(5) As used herein a credit union means a credit union chartered under the provisions of the Federal Credit Union Act or [the Hawaii Credit Union Act,] article 10 of chapter [410.] 412."

SECTION 18. Section 432:1-104, Hawaii Revised Statutes, is amended to read as follows:

"**§432:1-104 Definitions.** For the purposes of this article:

(1) Commissioner means the insurance commissioner of the State of Hawaii.
(2) Mutual benefit society is any corporation, unincorporated association, society, or entity:
    (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
        (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or children, or
        (ii) Making provision for the payment of any other benefits to or for its members,

    whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families, heirs, blood relatives, or persons named by its members as their beneficiaries; or

(B) Organized and carried on for any purpose, which:
(i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
(ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members,
whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or
(C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subsections (A) and (B).
Participating in a prepaid legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article. [It shall be deemed to be a fiduciary company within the meaning of section 402-1 and shall, in all respects, unless otherwise specifically provided, be subject to part I of chapter 402, relating to fiduciary companies.]"

SECTION 19. Section 432:1-501, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under article 2 of the insurance code are extended to and imposed upon the commissioner in respect to examinations of mutual benefit societies. [The provisions of section 401-3 relative to examination of fiduciary companies shall not apply to mutual benefit societies.]"

SECTION 20. Section 432:1-502, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Except as otherwise provided by the court or judge, any receiver appointed under this article shall have, exercise, and perform all of the powers and duties of a receiver of a [fiduciary company, as conferred and prescribed in section 402-5, which is made applicable.] financial institution under chapter 412, article 2, part IV."

SECTION 21. Section 435E-15, Hawaii Revised Statutes, is amended to read as follows:

"**§435E-15 Funds, investment.** All funds held in trust which are in excess of current financial needs shall be invested and reinvested from time to time, under the direction of the board of trustees, in a manner consistent with the requirements of [section 406-22,] article 8 of chapter 412, or in certificates of deposits or time deposits issued by banks [and], savings banks, savings and loan associations and depository financial services loan companies in Hawaii duly insured by instrumentalities of the United States government."

SECTION 22. Section 441-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The investment of perpetual care funds and pre-need trusts by a bank or trust company appointed as trustee shall be governed by the standards prescribed in [section 406-22 for trust companies acting as fiduciaries.] article 8 of chapter 412."

SECTION 23. Section 476-28, Hawaii Revised Statutes, is amended to read as follows:

"**§476-28 Regulation of finance charges.** It shall be unlawful, directly or indirectly, to charge, contract for, collect, or receive any finance charge, on a credit sale contract except as is provided by this section.

(1) If the finance charge is stated as a dollar amount and is added on or deducted in advance, and the buyer promises to pay a fixed total of payments, the finance charge shall not exceed the amount of interest or discount which could lawfully be added on or deducted in advance by a financial services loan company under [chapter 408] article 9 of chapter 412 on a loan to run for the same period as the credit sale contract, where the actual cash received by the borrower would be equal in amount to the principal balance of the credit sale contract, provided that a minimum finance charge of not more than $10 shall be allowable in a credit sale when the finance charge is stated in a dollar amount. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract shall be eighteen per cent a year, unless a lesser rate for after maturity finance charge is specified in the contract.

(2) As an alternative to the finance charge authorized by paragraph (1), a seller may contract for and receive a finance charge at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract, whether or not the rate of the finance charge under the contract is fixed or variable. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract may be twelve per cent a year, the original contract rate of finance charge or, in the case of any extension or deferral, the rate of finance charge permitted by this chapter on the amount extended or deferred, whichever is greatest."

SECTION 24. Section 478-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) It shall in no case be deemed unlawful, with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract, for any rate of simple interest not exceeding [the greater of] one per cent per month or twelve per cent [per annum,] a year or, in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), for any rate of simple interest not exceeding two per cent per month or twenty-four per cent a year; and it shall in no case be unlawful, with respect to any credit card agreement, to stipulate by written contract for any rate of simple interest not exceeding [the greater of] one and one-half per cent per month or eighteen per cent a year.

(b) As an alternative to the rate of interest specified in subsection (a), it shall be lawful with respect to any consumer credit transaction (except a credit card

agreement) and any home business loan to stipulate by written contract for the payment and receipt of a finance charge in any form or forms at an annual percentage rate not to exceed twelve per cent, or twenty-four per cent in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), together in either case with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act, and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The rates in this paragraph shall be available as alternative permissible rates for any of the credit transactions referred to, whether in fact or in law the Truth in Lending Act applies to the transaction, notwithstanding the advance, fixed, or variable manner in which interest or finance charge may be computed under the contract, and whether the contract uses the terms interest, annual percentage rate, finance charge or any combination of such terms. For rate computation purposes, with respect to any contract to which this paragraph may apply, the creditor conclusively shall be presumed to have given all disclosures in the manner, form and at the time contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge."

SECTION 25. Section 478-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The rate limitations contained in subsections (a) and (b) of this section shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapter [408] 412 or 476."

SECTION 26. Section 478-5, Hawaii Revised Statutes, is amended to read as follows:

"**§478-5 Usury not recoverable.** If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs[; provided that any bank or savings and loan association may charge, contract for, receive, collect in advance, or recover interest, discount, and other charges at the same rates and in the same amounts as permitted by law in the case of loans made by financial services loan companies licensed under chapter 408, subject to the penalties imposed by that chapter if a greater rate of interest than that permitted by chapter 408 is contracted for or there is any other violation of sections 408-15 and 408-17 applicable to licensees under chapter 408]. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply, [except for the foregoing proviso,] to loans made [under chapter 408.] by financial services loan companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412."

SECTION 27. Section 478-8, Hawaii Revised Statutes, is amended to read as follows:

"**§478-8 Exemptions from usury.** (a) The provisions of this chapter (except for this section and section 478-3) shall not apply to any mortgage loan wholly

or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code.

(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

(1) Indebtedness which is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980; or

(2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation; or

(3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction; or

(4) Any transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter [403, 406, 407, 408, 409, 410,] 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2.

(c) The provisions of this chapter (except for this section and section 478-3) shall not apply to a loan made by an employee benefit plan as defined in section 1002(3) of Title 29 of the United States Code, as amended, or a loan made by the employees' retirement system of the State of Hawaii.

(d) This chapter shall not apply to any mortgage loan which may be made by a financial institution pursuant to rules adopted by the commissioner of financial institutions pursuant to section 412:2-108."

SECTION 28. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A transaction, although subject to this Article, is also subject to article 9 of chapter [408 (financial services loan act), chapter 409 (small loan act),] 412

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 29. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every managing agent shall:

(1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter [406;] 412;

(2) Register annually with the commission. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, name, business address, and phone number;

(3) Provide evidence annually and at time of initial registration of a fidelity bond in an amount equal to $500 multiplied by the aggregate number of units covered by all of the managing agent's contracts; provided that the amount of the bond shall not be less than $20,000 nor greater than $100,000. The bond shall protect the managing agent against the loss of any association money, securities, or other property caused by the fraudulent or dishonest acts of employees of the managing agent. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or bond alternative, or permit deductibles;

(4) Act promptly and diligently to recover from the bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association cannot recover its loss from the bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:
   (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
   (B) The managing agent is a licensed real estate broker; and
   (C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; and

(5) Pay an application fee and, upon approval, an initial registration fee for the first year, and subsequently pay an annual reregistration fee as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto."

SECTION 30. Section 514A-97, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All funds collected by an association, or by a managing agent for any association, shall be:

(1) Deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government;
(2) Held by a corporation authorized to do business under article 8 of chapter [406;] 412; or
(3) Invested in the obligations of the United States government.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds."

SECTION 31. Section 514A-106, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-106 Financial institutions and escrow companies, obligations.** Any person subject to chapter [403, 407, 408, 410,] 412 or 454, or who is subject to any other law for the purpose of lending money upon the security of real property shall:

(1) Within forty-five days after receipt of an application for credit from any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, notify the applicant of the action on the application; and
(2) Prior to making any commitment to extend credit to any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, take all reasonable steps necessary to determine that the individual, in fact, intends to become an owner-occupant of such residential unit."

SECTION 32. Section 516-40, Hawaii Revised Statutes, is amended to read as follows:

"**§516-40 Bonds as legal investments.** The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the housing finance and development corporation under this part, and such bonds and other obligations of the corporation shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investments, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 33. Section 554-6, Hawaii Revised Statutes, is amended to read as follows:

"**§554-6 Investments.** Every trustee, other than a trust company acting as such, except insofar as the terms of the instrument or words creating or defining the trust specifically provide otherwise, or unless it is otherwise ordered by the court, which order may be made on an ex parte hearing, shall invest the funds of the trust only in the investments authorized in the cases of trust companies acting as trustees under [section 406-22,] article 8 of chapter 412, and with respect to all investments and the security for the same every such trustee shall have and be subject to the same rights, powers, privileges, duties, obligations, and responsibilities as would apply to trust companies acting as trustees as to similar investments and the security for the same under [section 406-22.] article 8 of chapter 412. Nothing in this section shall be deemed to authorize any trustee other than a trust company to issue participation certificates or notes. Any investment made by any such trustee under order by the court made on an ex parte hearing or otherwise may be held during the life of the trust or lesser period unless the terms of the instrument or words creating or defining the trust or the terms of the order of the court or of any subsequent order of the court specifically provide otherwise."

SECTION 34. Section 560:3-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If a proposed personal representative under (a)(2) above is not either a trust company [qualified] chartered under article 8 of chapter [406] 412 or a bank with authority to engage in trust business [under section 403-33], the registrar or the court shall determine whether or not the proposed personal representative of the estate has the experience and capacity to effectively serve as a personal representative, and whether or not the character, financial responsibility, and general fitness of the officers and the directors of the proposed personal representative are such as to command the confidence of the community and warrant the belief that the office of personal representative will be honestly and efficiently managed. If the registrar or the court determines that the proposed personal representative is so experienced and capable and its personnel does possess such qualities, the registrar or the court shall appoint the corporation as personal representative conditioned upon the posting of a bond under Part 6 in such amount as seems prudent under the circumstances of the estate."

SECTION 35. Section 10(1) of Act 106, Session Laws of Hawaii 1992, is amended by amending the definition of "trust company" to read as follows:

"'"Trust company" means a corporation or joint stock company authorized to conduct business as a trust company under article 8 of chapter [406.] 412."

SECTION 36. All acts passed by the legislature during this Regular Session of 1993, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 37. This Act shall not affect rights and duties that matured, penalties that were incurred, proceedings that were begun, applications that were filed, and the validity of any extension of credit or other transaction lawfully entered into, on or before its effective date.

SECTION 38. Except as otherwise expressly set forth in section 412:2-512, 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 39. Chapters 401, 402, 403, 404, 405, 405A, 405D, 406, 407, 408, 409, 410, and 411, Hawaii Revised Statutes, are repealed.

SECTION 40. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 41. This Act shall take effect July 1, 1993.

(Approved July 1, 1993.)

Notes

1. So in original.
2. Should be underscored.