

ACT 107

H.B. NO. 3149

A Bill for an Act Relating to the Code of Financial Institutions.

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

SECTION 1. Section 412:2-309, Hawaii Revised Statutes, is amended to read as follows:

**“§412:2-309 Consent order of removal [and] or 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] permanent 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.”

SECTION 2. Section 412:2-311, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“§412:2-311 Suspension[,], or revocation [or surrender] of charter or license.”**

SECTION 3. Section 412:2-314, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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] the conditions as the commissioner may approve.”

SECTION 4. Section 412:2-502, Hawaii Revised Statutes, is amended to read as follows:

**“§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] the 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] The 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] the information shall be required to keep the [same] information confidential.”

SECTION 5. Section 412:2-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] the violation continues.”

SECTION 6. Section 412:3-103, Hawaii Revised Statutes, is amended to read as follows:

**"§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] amendment to the 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 and any amendments thereof shall be kept on file by the division."

SECTION 7. Section 412:3-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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. 1831m). 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[.] as follows:
  - (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[.]; and
  - (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[.];provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days.

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] the 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."

SECTION 8. Section 412:3-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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."

SECTION 9. Section 412:3-501, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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]; provided that for the purposes of this section, 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,

staffed or unstaffed, electronic processing device, including associated equipment and structures, that is situated at a premises separate from a financial institution's principal<sup>1</sup> 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[.]; and

- (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."

SECTION 10. Section 412:3-600, Hawaii Revised Statutes, is amended to read as follows:

**"§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], or voluntary 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."

SECTION 11. Section 412:3-601, Hawaii Revised Statutes, is amended to read as follows:

**"§412:3-601 No conversions, mergers, consolidations, acquisitions, assumptions, [or] voluntary cessations of business, 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], or dissolve except in accordance with this part."

SECTION 12. Section 412:3-603, Hawaii Revised Statutes, is amended to read as follows:

**“§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] or voluntary 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; and<sup>1</sup>

- (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."

SECTION 13. Section 412:3-604, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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; or
- (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."

SECTION 14. Section 412:3-608, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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] shareholders 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."

SECTION 15. Section 412:3-617, Hawaii Revised Statutes, is amended to read as follows:

**"§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; and
- (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<sup>1</sup> 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,] certificates, 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] expenses 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; and
  - (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;
- and
- (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) Subject to the approval of the commissioner, a nondepository financial services loan company may voluntarily cease activity for which a license to operate as a financial services loan company is required by this chapter, in the manner prescribed as follows:

- (1) The board of directors shall adopt a resolution approving a plan to cease activity for which a license to operate as a financial services loan company is required. If applicable, the plan shall include but not be limited to provisions for the sale, exchange, or disposition of all loans or other business for which a financial services loan company license is required by this chapter;
- (2) The nondepository financial services loan company shall file an application with the commissioner pursuant to section 412:3-603 for approval to cease activity for which a license to operate as a financial services loan company is required. The application shall be accompanied by:
  - (A) A copy of the plan to cease activity for which a license to operate as a financial services loan company is required, certified by two executive officers of the nondepository financial services loan company, to have been duly adopted by the board;
  - (B) The information required in an application filed pursuant to section 412:3-613, if applicable; and
  - (C) Any other information that the commissioner may require;
- (3) The commissioner shall approve the application to cease activity for which a license to operate as a financial services loan company is required if:
  - (A) The commissioner is satisfied with the plan;
  - (B) The conditions for approval contained in section 412:3-613 have been met, if applicable; and
  - (C) No other reason exists to deny the application; provided that the commissioner may impose any restrictions and conditions as the commissioner deems appropriate; and
- (4) Upon receipt of the commissioner's approval, a nondepository financial services loan company that has filed a plan attesting that the company does not retain any loans or other business for which a financial services loan company license is required by this chapter, shall forthwith surrender to the commissioner all of its financial services loan company licenses. A nondepository financial services loan company that has filed a plan that includes provisions for the sale, exchange, or disposition of loans or other business, upon receipt of the commissioner's approval, shall proceed with its plan to cease activity for which a license to operate as a financial services loan company is required. Upon completion of its plan, the nondepository financial services loan company shall file a written notification with the commissioner. The written notification shall be accompanied by the surrender of all of its financial services loan company licenses.

[(c)] (d) 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.”

SECTION 16. Section 412:6-303, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) A savings bank’s deposits with a Federal Reserve Bank, Federal Home Loan Bank, or another depository institution made in compliance with this chapter;
- (2) A savings bank’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;
- (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.”

SECTION 17. Section 412:9-410, Hawaii Revised Statutes, is amended to read as follows:

**“§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] do not exceed twenty-five per cent of the depository financial services loan company’s capital and surplus, unless otherwise permitted by federal law.”

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved June 8, 1994.)

**Note**

1. So in original.