

ACT 225

S.B. NO. 3159

A Bill for an Act Relating to Insurance, Annuities and Securities Activities of Banks.

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

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding three new sections to article 5 to be appropriately designated and to read as follows:

“§412:5-A Insurance and annuities powers. (a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-B and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to making contracts of insurance and selling insurance as general agent, subagent, broker, or solicitor, selling insurance through an independent insurance agent or agency under contract, selling annuities, and engaging in any related or incidental activities, within the State; provided that any insurance activities conducted pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431. Administration of chapter 431 and any insurance administrative rules shall be vested with the insurance commissioner.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-B and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to the making of contracts of insurance and the sale of insurance as general agent, subagent, broker, or solicitor, selling insurance through an independent insurance agent or agency under contract, selling annuities, and engaging in any related or incidental activities, in any places outside this State, including any other states of the United States, dependencies or insular possessions of the United States, or any foreign countries; provided that any insurance activities conducted in this State pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431; provided further that any insurance activities conducted outside the State pursuant to the authority in this subsection shall be governed by and comply with the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of insurance activities within that jurisdiction.

(c) The bank shall file an application for approval with the commissioner in a form prescribed by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain:

- (1) A description of the activities to be conducted;
- (2) The experience and qualifications of the proposed managers;
- (3) The specific location where the activities will be conducted; and
- (4) Any other information that the commissioner may require.

If the bank proposes to engage in the business of insurance through a subsidiary or affiliate, then the application shall also contain information regarding the experience and qualifications of the proposed executive officers and directors of the subsidiary or affiliate and the ownership, amount, and nature of the bank's investment in and advances to the subsidiary or affiliate. Upon being satisfied that the application is complete, that the conduct of the insurance business will not affect the safety or soundness of the bank or harm the public interest, and that the bank and its subsidiary or affiliate, if applicable, have sufficient experience, qualifications, and

financial capability to engage in the activities authorized by this section, the commissioner shall approve the application. The commissioner may impose any terms and conditions which the commissioner considers necessary to protect the bank, the customers of the bank, and the public interest.

(d) Upon receipt of the commissioner's approval under this section, the bank or its subsidiary or affiliate shall obtain any necessary approvals from the insurance commissioner required under chapter 431 and any insurance administrative rules adopted under chapter 431, or the applicable insurance and banking laws of any jurisdiction other than this State in which the bank will be conducting its insurance and annuity activities.

(e) The provisions of this section are in addition to, and not a limitation of, any other provision in this chapter. The powers granted by this section may be exercised notwithstanding any other provision of this chapter. Furthermore, the commissioner may adopt rules governing the exercise of powers granted by this section as the commissioner finds necessary to avoid unsound banking practices, to ensure the safety and soundness of the bank, and to protect the public interest.

§412:5-B Requirements of banks engaging in insurance activities. (a)

Pursuant to section 412:5-A a bank may engage in insurance underwriting if the following requirements are met:

- (1) The insurance underwriting activities shall be conducted in a separately capitalized subsidiary of the bank or affiliate of its bank holding company;
- (2) A bank or the bank holding company that controls an insurance underwriting subsidiary shall be subject to article 11, chapter 431, relating to insurance company holding systems;
- (3) The name of the insurance underwriting subsidiary or affiliate and any assumed business name used by it shall not be identical to that of the bank;
- (4) The logo of the insurance underwriting subsidiary or affiliate shall not be identical to that of the bank; and
- (5) In no event shall any liabilities or losses associated with the banking activities of the bank be recoverable through the Hawaii Insurance Guaranty Association, the Hawaii Life and Disability Insurance Guaranty Association, or the insurance guaranty fund of another state.

(b) Pursuant to section 412:5-A, a bank may engage in insurance sales through an independent insurance agent or agency under contract. In addition, a bank may engage in insurance sales pursuant to section 412:5-A, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, if the following requirements are met:

- (1) The bank is prohibited from offering insurance products at teller stations;
- (2) An agent of the bank or of its subsidiary or affiliate engaged in selling insurance in this State pursuant to section 412:5-A shall be licensed in accordance with article 9, chapter 431;
- (3) The bank or its insurance affiliate or subsidiary shall be subject to article 13, chapter 431, relating to unfair practices;
- (4) The bank or its insurance affiliate or subsidiary shall prominently disclose in writing to customers solicited to purchase non-credit insurance that the insurance offered or sold:
 - (A) Is not a deposit;
 - (B) Is not insured by the Federal Deposit Insurance Corporation; and
 - (C) Is not guaranteed by the bank or an affiliated depository institution.

- (5) The bank or its insurance affiliate or subsidiary shall disclose in writing to customers solicited to purchase annuities that annuities offered or sold when appropriate, involve investment risk, including potential loss of principal.

(c) Upon receipt of the commissioner's approval under section 412:5-A, the bank or its subsidiary or affiliate shall obtain any necessary approvals from the insurance commissioner required under chapter 431 and any insurance administrative rules adopted under chapter 431 or the applicable insurance and banking laws of any jurisdiction other than this State in which the bank will be conducting its insurance and annuity activities.

§412:5-C Securities powers. (a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, may engage in the following securities activities and in any related or incidental activity, within the State:

- (1) Sale or purchase of any security on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or in the laws of the jurisdiction in which investment company operates;
- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to, the provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter 485 and any securities administrative rules adopted under chapter 485. Administration of chapter 485 and any securities administrative rules shall be vested with the commissioner of securities.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, either directly in any department or division of the bank or through a subsidiary or affiliate thereof, may engage in the following securities activities and in any related or incidental activities, in any place outside this State, including any other state of the United States, dependencies or insular possession of the United States, or any foreign countries:

- (1) Sale or purchase of any security, as defined under applicable law, on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Invest-

ment Company Act of 1940 (15 U.S.C. 80a-3) or as otherwise defined under applicable law;

- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to, the provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter 485 and any securities rules adopted under chapter 485 or the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of such securities activities within that jurisdiction.

(c) The bank shall file an application for approval with the commissioner in a form prescribed by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain:

- (1) A description of the activities to be conducted;
- (2) The experience and qualifications of the proposed managers;
- (3) The specific location where the activities will be conducted; and
- (4) Any other information that the commissioner may require.

If the bank proposes to engage in securities activities through a subsidiary or affiliate, then the application shall also contain information regarding the experience and qualifications of the proposed executive officers and directors of the subsidiary or affiliate and the ownership, amount, and nature of the bank's investment in and advances to the subsidiary or affiliate. Upon being satisfied that the application is complete, that the conduct of the securities activities will not affect the safety or soundness of the bank or harm the public interest, and that the bank and its subsidiary or affiliate, if applicable, have sufficient experience, qualifications, and financial capability to engage in the activities authorized by this section, the commissioner shall approve the application. The commissioner may impose any terms and conditions which the commissioner considers necessary to protect the bank, the customers of the bank, and the public interest.

(d) Upon receipt of the commissioner's approval under this section, the bank or its subsidiary or affiliate shall obtain any necessary approvals required under chapter 485 and any securities administrative rules adopted under chapter 485 or the applicable securities and banking laws of the jurisdiction in which it will be conducting its securities activities.

(e) The provisions of this section are in addition to and not in limitation of any other provision of this chapter. The powers granted by this section may be exercised notwithstanding any other provision of this chapter. Furthermore, the commissioner may adopt rules governing the exercise of powers granted by this section as the commissioner finds necessary to avoid unsound banking practices, to ensure the safety and soundness of the bank, and to protect the public interest."

SECTION 2. Section 412:5-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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].”

SECTION 3. Section 412:5-305, Hawaii Revised Statutes is amended by amending subsection (g) to read as follows:

- “(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[.];
 - (9) Of a company transacting a business of insurance or the sale of annuities pursuant to the authority conferred in section 412:5-A; and
 - (10) Of a company engaging in securities activities pursuant to the authority conferred in section 412:5-C.”

SECTION 4. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:13-104 **Favored agent or insurer; coercion of debtors.** (a) No person may require as a condition precedent to the lending of money or extension of

credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance [for the protection of real property], after a person indicates interest in securing a [first mortgage] loan or credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension[;]. The requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions;
- (2) Unreasonably reject a contract of insurance furnished by the borrower [for the protection of the property securing the credit or lien.] where insurance is required by the loan or credit transaction. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the loan or credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required [as security for a loan on real estate,] by the loan or credit transaction, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose[, without the prior written consent of the borrower, mortgagor or purchaser taken at a time other than the making of the loan or extension of credit,] information relative to a contract of insurance which is required by, or supplied in response to, the loan or credit transaction, for the purpose of replacing the insurance[;] or soliciting insurance;
- (5) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance [on real and personal property] subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (b)(2). Compliance with disclosures as to insurance required by Truth-In-Lending laws or comparable state laws shall be in compliance with this paragraph.

[This requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions.]

(d) The commissioner shall have the power to examine and investigate those insurance related activities of any person whom the commissioner believes may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(e) Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(f) Nothing contained in this section shall apply to credit life or credit disability insurance.

(g) Nothing in this section shall prevent a person who lends money or extends credit from assisting a mortgagor, borrower, or purchaser in obtaining homeowners insurance where the borrower requests such assistance in writing. Nothing in this section shall prevent a person who lends money or extends credit from referring a mortgagor, borrower, or purchaser to the Hawaii hurricane relief fund.

(h) The commissioner shall adopt rules to prevent any bank, or subsidiary or affiliate thereof, which is engaged in insurance activities, from draining assets to the detriment of the insurance operations; and shall also adopt rules to obtain diverted assets from the bank, subsidiary, or affiliate in the case of insolvency of the insurance operation."

SECTION 5. In codifying the new sections added to chapter 412, article 5, Hawaii Revised Statutes, by section 1 of this Act, and referenced in sections 3 and 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating new sections.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. (a) This Act shall take effect upon its approval; provided that the power of a bank to:

(1) Directly sell insurance in this State other than through a subsidiary or affiliate of the bank or through an independent insurance agent or agency under contract; and

(2) Underwrite insurance in this State;

pursuant to the authority conferred in sections 412:5-A and 412:5-B, Hawaii Revised Statutes, shall become effective on June 1, 2000.

(b) After May 31, 2000, in addition to sales through a subsidiary, affiliate, or independent insurance agent or agency, a bank may sell insurance directly through a division or department of the bank and on branch premises:

(1) At no more than twenty-five per cent of all of its State of Hawaii branches between June 1, 2000, and May 31, 2001;

(2) At no more than fifty per cent of all of its State of Hawaii branches between June 1, 2001, and May 31, 2002; and

(3) At no more than seventy-five per cent of all of its State of Hawaii branches between June 1, 2002, and May 31, 2003.

After May 31, 2003, there shall be no restrictions on the number of State of Hawaii branches from which banks may be permitted to directly sell insurance on branch premises through a division or department of the bank.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.