

ACT 63

S.B. NO. 2518

A Bill for an Act Relating to Financial Services Loan Companies.

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

SECTION 1. Section 412:1-103, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise provided in this section, any Hawaii financial institution which on July 1, 1993, is not in compliance with any of the provisions of [sections] section 412:3-104, 412:3-106, 412:3-209, 412:3-500, or 412:4-104[, or 412:9-101 of this chapter] shall within one-hundred-eighty days after July 1, 1993, 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 July 1, 1993, unless otherwise provided herein or by federal law, or unless extended by the commissioner.”

SECTION 2. Section 412:3-104, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-104 Qualification¹ 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] Except for nondepository financial services loan companies, 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.”

SECTION 3. Section 412:3-111, Hawaii Revised Statutes, is amended to read as follows:

“**§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 nondepository financial services loan company which is not incorporated in this State shall maintain at its principal office in this State all books and records relevant to the transaction of its business in this State for the purpose of examination by the commissioner under section 412:2-200; provided that the commissioner may approve in writing specific books and records which may be maintained outside this State. For the purpose of an examination under section 412:2-200, specified books and records maintained outside this State shall be made available for review by the commissioner within ten business days after the date that a written request for the specified books and records is made by the commissioner, or at such subsequent time as approved in writing by the commissioner. The commissioner

may impose an administrative fine on a nondepository financial services loan company which fails to make available any specified books or records as requested by the commissioner under this subsection. The fine shall not exceed \$1,000 for each day that any specified books or records are not made available as requested by the commissioner. The fine shall be recovered under section 412:2-609.

[(b)] (c) 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)] (d) 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)] (e) 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)] (f) 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).] (g).

[(f)] (g) 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)] (h) 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."

SECTION 4. Section 412:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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."

SECTION 5. Section 412:3-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every nondepository financial services loan company [existing or organized] conducting business under the laws of this State shall at all times have paid-in capital and surplus of not less than \$500,000."

SECTION 6. Section 412:9-101, Hawaii Revised Statutes, is amended to read as follows:

“§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[.]; provided that a nondepository financial services loan company shall not be required to be incorporated in this State.”

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

SECTION 8. This Act shall take effect upon its approval.

(Approved May 1, 1996.)

Note

1. Prior to amendment “qualifications” appeared here.