

## ACT 39

H.B. NO. 2810

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 412:3-600, 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[,] or deposits, acquisition of control, voluntary cessation of business, or voluntary dissolution [of] involving 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]

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

**“§412:3-601 No conversions, mergers, consolidations, acquisitions, assumptions, 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 acquire all or substantially all of the assets or assume any of the liabilities of another company, 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, cease business, or dissolve except in accordance with this part.”

SECTION 3. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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,] this State, in any possession or territory of the United States, or in any foreign country and one or more Hawaii depository financial institutions or trust companies may be merged or consolidated, but only where the depository financial institution or trust company 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] that conducts its operations principally in this State[.], or is an out-of-state bank authorized to establish interstate branches in this State pursuant to section 412:12-104. A nondepository financial services loan company licensed pursuant to article 9 may be merged or consolidated with another corporation, but only where the nondepository financial institution resulting from any merger or consolidation is licensed under the laws of this State. The financial institution chartered or licensed under the laws of any state other than [Hawaii,] this State, 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 or licensed 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. 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 in writing. If the resulting institution is a federal financial institution, 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 in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 415.”

SECTION 4. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(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 or licensed under the laws of any state other than [Hawaii,] this State, 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 or licensed 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.”

SECTION 5. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsections (i) and (j) to read as follows:

“(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 or licensed 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] interests 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 anti-competitive 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] their 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 depository financial institution or trust company which is the resulting institution shall continue as the charter or license of the resulting depository financial institu-

tion or trust company upon the effective date of the merger. In the case of a consolidation, when the commissioner is satisfied that the participating depository financial institutions or trust companies 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 depository financial institution or trust company. A nondepository financial services loan company license may be issued to the resulting financial institution in conjunction with a merger or consolidation upon compliance with all applicable laws regarding the issuance of a license to a nondepository financial services loan company.”

SECTION 6. Section 412:3-613, Hawaii Revised Statutes, is amended by amending the title to read:

**“§412:3-613 [Acquisition] Sale or acquisition of assets and transfer or assumption of liabilities.”**

SECTION 7. Section 412:3-613, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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, or may acquire all or substantially all of the assets or assume all or substantially all of the liabilities or assume any deposits of another company, 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] Whenever the transferring financial institution is a Hawaii financial institution, the sale or other disposition of its assets or business or the transfer of its deposits or liabilities 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] sale or assumption shall be approved by the shareholders or members of the transferring Hawaii 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.”

SECTION 8. Section 412:3-613, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(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.”

SECTION 9. Section 412:12-102, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§412:12-102]]~~ **Authority of Hawaii state banks to establish interstate branches by merger.** (a) With the prior approval of the commissioner, a Hawaii state bank may establish and operate one or more branches in a state other than Hawaii, pursuant to an interstate merger transaction in which the Hawaii state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Hawaii state bank shall comply with and the application shall be processed in accordance with all applicable provisions of [this] part VI, article 3, of this chapter. The interstate merger transaction may be consummated and the Hawaii state bank may establish and operate the branches outside of Hawaii only after the applicant has received the commissioner’s written approval.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 29, 1998.)